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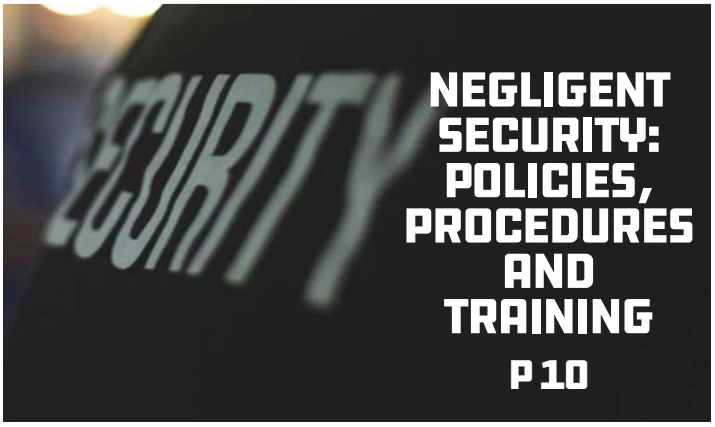

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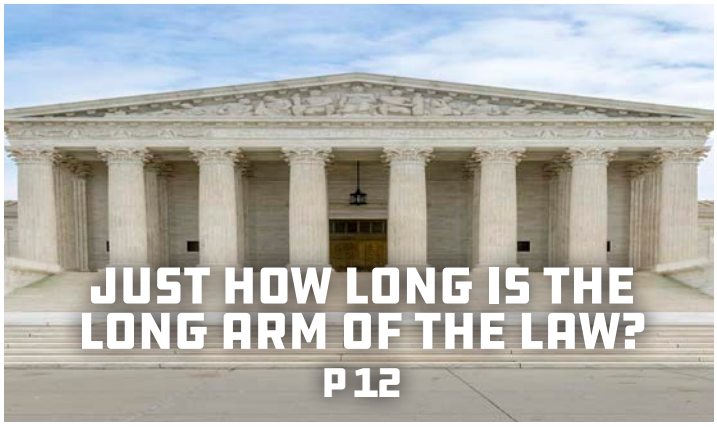

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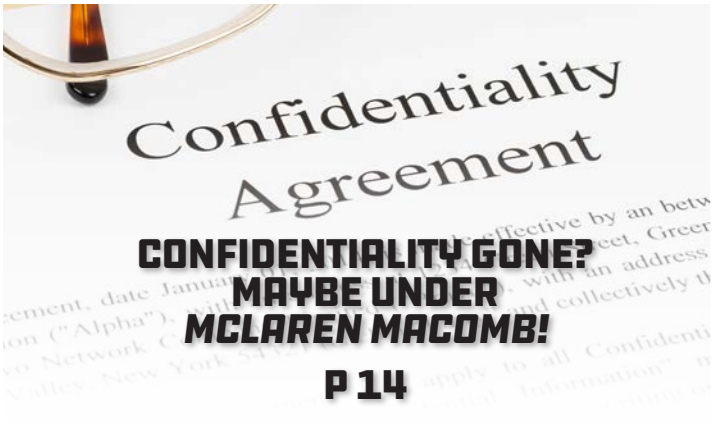

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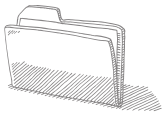

from the CHAIR'S DESK

At the member meeting during the Fall 2023 USLAW NETWORK Client Conference, I was honored to take the reins as Chair of USLAW NETWORK for the year ahead. I look forward to working with everyone as we continue to demonstrate our unwavering commitment to building trusted relationships and providing timely and effective service to clients.

As you know, the business and legal landscape is ever-changing. We could not have predicted many of today's headlines just a short time ago. From tech to labor, AI, and electric vehicles, we live in a vibrant intellectual and innovative world that creates opportunities and perils in our daily lives requiring up-to-date legal services. USLAW is here to help you navigate this complex world.

Tap into USLAW for trusted referrals and timely updates to address the range of topics that might impact your business operations.

USLAW Magazine is just one of the dozens of resources available to you through the NETWORK that deliver timely content. In this issue, you will read about the National Labor Relations Board's ground-shaking decision in McLaren Macomb and its impact on current, past and future severance agreements. Also, you will see topics that address the extraterritorial application of the Lanham Act, water rights in agricultural transactions, how medical factoring companies impact your case, security and safety in the retail and hospitality industry, and more.

Please connect with us, participate in our programs, and take advantage of the many complimentary USLAW resources. Let us know how we can help you. Please enjoy this issue of USLAW Magazine, and thank you for your continued support of USLAW NETWORK and our member firms.

Sincerely,

Oscar J. Cabanas
USLAW NETWORK Chair
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How to Find and Use Smartphone Data

William M. Davis Bovis Kyle Burch & Medlin LLC

I once met an interesting person at a party who told me a story about a difficult breakup which prompted her to cease communications with her former suitor by "blocking" him on various social media apps. She was later surprised to find that he was still able to message her by sending her one dollar via Venmo (a payment service that lets users send and receive money) and typing a message in the comment section. If you've ever used Venmo or PayPal, you're probably as surprised as I was by this story. Most of us think of those apps exclusively as a media for exchanging money—not as a messaging service.

This story says something about the myriad ways we are communicating on smartphones these days. Once upon a time, it was appropriate to think of text messaging and phone calls as one thing and social media as another, but nowadays most traditional social media offer messaging applications that look and feel like traditional text messaging. In fact, most of these messaging applications allow users to make voice/video calls to other users. Nowadays, it's hard to define exactly what a "phone call" is. Is it the transmission of voice data across a network that generates a CDR (call detail record) reported on a mobile phone bill—or is it a call on Facebook, WhatsApp, Signal or a similar messaging service that bypasses a carrier's phone network and is reported only as "data usage" on a mobile phone bill?

It's no secret that smartphone data—including social media and messaging—can be relevant in multiple legal contexts. Smartphone data has been used to show wrongdoing and regulatory violations in the securities industry. Smartphone users have sued employers over BYOD (bring your own device) policies which involve monitoring employee communications in violation of federal and state privacy laws.

Most commonly, smartphone data is of interest to parties to litigation, as such data can establish precise communication timelines, maps of locations visited by users and even offer a window into physical activity.

If smartphone data is important to the outcome of litigation, then knowing where to look, how to look and how to reduce the data found to admissible evidence is a vital skill for investigators, claims professionals and litigators. In this article, I will discuss some of the most overlooked aspects of smartphone data discovery and use.

LOCAL VERSUS "CLOUD" DATA

Anytime a smartphone is connected to the internet—either through the carrier's cellular network or through a Wi-Fi connection—it has the ability to send and receive data from remote computers. These computers constitute what is colloquially called "the cloud." Some smartphone data is saved

in the cloud, and other data is saved on the phone itself in its internal storage.

This technical aspect of data storage is important because smartphone data is rarely "lost." A party who lost her smartphone is not locked out of her social media/messaging accounts, as those accounts may be accessed from any internet-enabled device. Likewise, a party who has permanently deleted his social media/messaging accounts may still access his data locally on the internal storage of his smartphone, or the data may be accessed by professionals with special tools.

PUBLIC VERSUS "PRIVATE" DATA

Social media sites allow users to set various privacy settings. A user may appear to the general public to have a minimal social media presence but may actually be sharing significant content daily with thousands of users behind a privacy wall.

Text messages of all sorts are generally thought of as "private" in that they have a limited audience. Text messaging applications are part of every social media service and are colloquially referred to as PMs (private messages) or DMs (direct messages).

Courts have generally not supported a blanket right to privacy of smartphone data—even when users have taken steps to protect privacy. The discovery process should be used to establish the existence of non-public data and to request its production.

SMS, NETWORK CDRS, AND INTERNET DATA

A carrier's cell phone network is a private network, which is different from a generic internet connection through Wi-Fi. Communications occurring over a generic internet connection will not appear as detailed records on the user's monthly phone bills. For example, users who make voice/video calls or send text messages over Facebook, Instagram, Signal, WhatsApp, *etc.* will not see these incoming/outgoing calls and messages appear as detailed records on their phone bills. A smartphone bill showing zero phone calls and zero texts does not mean that the owner of the phone wasn't using it to text and make calls daily over the internet. Conversely, someone who has no social media presence but who texts via SMS (over the carrier network via "regular" text) or makes calls using the carrier network will have a phone bill with detailed entries showing CDRs (call detail records) for each SMS that was sent/received and each call that was made/received. Discovery of smartphone data should thus involve an inspection of phone records and discovery requests targeted to the data on the phone and/or in the cloud.

METADATA

Metadata are data about data. An easy way to think of metadata is to envision a file folder on a computer that contains several files. The files can be sorted by name, date, size, *etc.* Those attributes (filename, size, date created, date modified) are metadata—they are data stored along with the content of the file that describe what the file is, when it was created, *etc.* Metadata are created without any special user input and can be crucial to show the date and time that communications were sent/received. Smartphone data should be considered incomplete without associated metadata.

COLLECTION STRATEGIES

If it is anticipated that smartphone data will be relevant to litigation, a good practice is to send a letter requesting the preservation of the data and the smartphone itself.

Smartphone data can be changed, altered, or hidden through privacy settings, so it is essential efforts to locate and preserve data take place as quickly as possible. If the data is publicly visible (such as a public Facebook page or Instagram account), the data can be downloaded and logged on a continual basis. There are third-party services that will monitor and collect public data on a real-time basis. For non-public data, the collection will depend upon the user disclosing the data pursuant to a proper discovery request. If appropriate, consider a physical inspection of the user's phone by a professional. Such an inspection can be obtained through the agreement of the parties or by obtaining a discovery order from the court.

TAILORED DISCOVERY REQUESTS

Courts have varying opinions regarding the production of smartphone data, but generally speaking, there should be some connection between the data sought and the issues in the pending litigation. Generally, courts will find that requests seeking unlimited discovery of data are overbroad. Limiting discovery requests to specific time periods and connecting them to facts alleged in the litigation or damages sought is a good practice.

WHY SUBPOENAS WON'T WORK

A subpoena will not yield successful results when seeking social media/messaging data directly from a provider. The Stored Communications Act, 18 U.S.C. § 2701 *et seq.*, contains restrictions on the production of certain electronic communications in response to a subpoena. Jurisprudence nationwide generally supports the notion that social media providers are subject to the SCA and are exempt from producing user data in response to a subpoena.

However, it is important to note that most social media providers have developed elaborate preservation tools that the account holder may use to preserve and download his or her entire account. If you have one or more social media accounts, I encourage you to download your own data and see what is available. Typically, you will find the download to contain an astonishing collection of information dating back to the time your account was created. Such data downloads can be searched using keywords to produce relevant results, similar to what is often done in large-scale electronic discovery for corporations.

USE AS EVIDENCE

Courts will require that smartphone data meet the standards for admissibility, meaning that there is sufficient proof of the authenticity of the data and sufficient grounds to establish that the data is not hearsay. Support for authenticity and hearsay exceptions must be generated throughout the discovery process, either by eliciting deposition testimony of the creator of the data, using metadata to establish authenticity, or obtaining the testimony of a recipient of the data.

One good feature of metadata is that it cannot be hearsay because it is not an oral or written statement or nonverbal conduct by a person. Thus, timestamps on messages, GPS tagging of photos, and other aspects of smartphone data are not hearsay. The text of smartphone communications is typically exempt from hearsay if they were written by a party to the litigation.

Not all of your cases are likely to involve jilted lovers who resort to Venmo payments to resume social media communications, but many of them are likely to implicate some form of electronic communications across the vast array of messaging platforms in use today. The best practice is to stay current on the smartphone communications platforms that are widely used and ask for preservation and discovery of any potentially relevant evidence early in litigation.

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WATER RIGHTS IN AGRICULTURAL TRANSACTIONS

From Evaluation and Verification to Conveyance

Vanessa A. Silke and **Hannes D. Zetzsche** Baird Holm LLP

Water rights can make, or break, an agricultural real estate transaction. Irrigation rights alone were appraised at over $24 million in a deal this article's authors helped to close. Even in transactions in which water rights are not separately valued, water availability can dictate the land's worth. Without secure water rights, cropland that requires irrigation may become nearly worthless.

Buyers, sellers, and lenders dealing in agricultural real estate thus need to understand and account for the status of water rights in their transactions. Below are best practices for due diligence associated with water rights.

"PAPER" WATER RIGHTS

Due diligence begins with a focus on "paper" water rights. A "paper" water right states who has the legal right to use water, in what manner, and when. Put differently, what do public records document about the water at issue? Does the seller have any permits or deeded water interests? Are those documents dispositive, or has a state-based permitting regime overridden them?

To begin, determine how water rights are administered locally. State laws govern most water rights, and those laws principally consist of two schemes.

First is the riparian doctrine, which developed in the water-abundant eastern states. It confers water rights based on land-ownership adjacent to a watercourse or on the land overlying a groundwater source. *See Tyler v. Wilkinson,* 24 F. Cas. 472, No. 14312 (C.C.D. R.I. 1827). The absolute-dominion, reasonable-use and correlative-rights rules are groundwater offshoots of the riparian doctrine.

Second is prior appropriation, which originated in the arid west. Appropriative rights do not depend on proximate land ownership but on the date on which water was first beneficially used. An appropriator has a right from the moment that they intended to apply water to a beneficial use, diverted the water from its natural course, and applied the water to a beneficial use. *See Irwin v. Phillips*, 5 Cal. 140 (1855).

Complicating this picture is the fact that these schemes stem from a combination of common-law and statutory authorities. Some states also use different regimes to regulate surface water and groundwater. *See e.g., Spear T Ranch, Inc. v. Knaub*, 691 N.W.2d 116, 125 (Neb. 2005). Most states and even some local regulators have further added a permitting-scheme overlay. *See e.g.* Or. Rev. Stat. § 537.140.

In this way, the manner of due diligence will depend on the local legal source of water rights. Whether from the land recording system or another state or local regulator, request copies of any permits, licenses, or other "paper" water rights, and evaluate how much water they allow and whether they are tied to specific parcels or times of irrigation.

"WET" WATER RIGHTS

While a "paper" water-rights review is essential, it alone is insufficient. Due diligence turns next to the difficult task of analyzing the "wet" water itself. At issue is whether the paper right confers as much actual water as it says, or at least enough to make the transaction economical.

The first potential risk is internal: Has the seller actually perfected and maintained their right? Or, if the buyer intends to acquire new rights, does the buyer meet the requirements? In a riparian jurisdiction, ensure that the land abuts the watercourse and that the seller currently holds or the buyer is eligible for any necessary permits. Consult surveys, public records and any historical data.

Alternatively, in a prior-appropriation jurisdiction, verify when the appropriator first made the beneficial use and if they have continued to do so in an adequate amount. Most jurisdictions enforce relinquishment, forfeiture, and prescription if a water right goes unused for a certain time. *See e.g., Twin Creeks Farm & Ranch, LLC v. Petrolia Irrigation Dist.*, 461 P.3d 91, 95 (Mont. 2020). Analyze public records showing crop productivity and request pumping data and other water-use records from the seller. Left unchecked, these internal risks can make a water right worthless, no matter its strength on paper.

External factors can also threaten "wet" water rights. Is a moratorium in place? Or, even without a declared moratorium, will competing rightsholders make the contemplated irrigation impractical? A riparian jurisdiction, in times of shortage, typically allocates a limited water body either in proportion to ownership of adjacent or overlying land or according to a reasonableness analysis. *See Holm v. Kodat*, 211 N.E.3d 310, 316 (Ill. 2022). Reasonableness, in some jurisdictions, incorporates a preference for domestic and municipal uses over irrigation. *See e.g.,* Neb. Rev. Stat. § 46-613.

During times of shortage, an appropriative jurisdiction, by contrast, will generally permit senior appropriators to issue calls forcing junior appropriators to stop pumping. *See Kelly v. Teton Prairie LLC,* 2376 P.3d 143, 146 (Mont. 2016). Is there any evidence that has already occurred or will soon occur? It is imperative to understand not only the extent of "paper" water rights at hand but also what the actual chances are that those rights will yield "wet" water when desired.

A "wet" water-rights review cannot rest on public records alone. Some jurisdictions gather and publish data about a water source's use and availability. See e.g., S.D. Codified Laws § 46-2-11. That is a good place to start. Buyers and lenders should also consult climatic and water-use data. In some cases, third-party hydrologists, economists, and other consultants will additionally be necessary to evaluate the "wet" water rights.

CONVEYANCE INSTRUMENTS

The final step, after due diligence, is to convey the water rights. Like land, water is often treated as a property right. *See Clawson v. State, Dep't of Agric., Div. of Water Res.*, 315 P.3d 896, 904 (Kan. App. 2013). But, unlike land, water rights are "usufructuary," meaning deeds and other instruments can, at most, convey a right to use the water but not ownership of the water itself. *Farmers Reservoir & Irrigation Co. v. Pub. Serv. Co. of Colorado*, 526 P.3d 161, 170 (Colo. 2022).

Also, unlike land, water rights depend on the correlative rights of others. Neighbors consequently may have good reason to oppose a conveyance if it affects their hydrologically connected rights. *Vill. of Four Seasons Ass'n, Inc. v. Elk Mountain Ski Resort, Inc.*, 103 A.3d 814, 820 (Pa. 2014).

Each jurisdiction has a different procedure for transferring water rights. Some riparian states imply a water conveyance any time the adjacent or overlying land transfers title. *See e.g., Sanders v. Plant*, 204 S.W.2d 323, 324 (Ark. 1947). Others require the deed to separately identify any riparian rights it intends to convey. *See Movrich v. Lobermeier*, 905 N.W.2d 807, 818 (Wisc. 2018).

Prior-appropriation jurisdictions typically permit water rights to be conveyed separately from land. *See e.g., Salt Lake City Corp. v. Big Ditch Irr. Co.*, 258 P.3d 539, 547 (Ut. 2011). That said, statutes may limit this, for instance, by prohibiting severing the water rights from land to which the water was originally applied or protecting the interests of third parties. *See* Okla. Stat. § 105.22; Utah Code § 73-3-14. In states with a permitting overlay, the buyer and seller may need to notify regulators or even apply for permission to complete the transfer. See Tex. Water Code § 11.084.

CONCLUSION

Water rights can, and should, form a linchpin of many agricultural land transactions. To protect themselves, landowners and lenders should take care to evaluate the "paper" and "wet" water rights at issue and follow local rules to effectively convey those rights. This article provides only a general overview of that process and is not a substitute for state-specific, and in some cases federal, analysis of water rights. That should involve experienced local counsel. Consultants may also be necessary to quantify water rights and evaluate their relationship with other local uses.

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DIRECT ACTIONS AGAINST INSURERS TO RECOVER INSURANCE POLICY PROCEEDS FOR DEFUNCT DEFENDANTS

Erica M. Baumgras and **William J. Aubel** Flaherty Sensabaugh Bonasso PLLC

Federal and state courts are split on the issue of whether a plaintiff may bring a direct action against the insurers of a dissolved corporation to recover insurance policy proceeds. You might ask, "Why would plaintiffs want to waste time suing insolvent corporations?" The answer is that insurance contracts may be considered the property of a dissolved corporation, even after the corporation's winding-up period has expired. *See In re Krafft-Murphy Co., Inc.*, 82 A.3d 696 (Del. 2013) (holding that contingent contractual rights were the property of a dissolved corporation).

Plaintiffs attempt to collect insurance policy proceeds from defunct defendants in a number of factual scenarios. Some common situations are when plaintiffs allege latent injuries, such as from asbestos or other exposures, when property damage from construction defects or contamination from pollution is discovered years later, or when a plaintiff has been injured by a product that was manufactured or distributed decades ago.

REASONS COURTS ALLOW RECOVERY OF INSURANCE POLICY PROCEEDS FROM DEFUNCT DEFENDANTS

In cases involving a plaintiff's allegations of latent injuries against a dissolved corporation, courts have allowed recovery of insurance proceeds from now-defunct defendants where the tortious conduct was committed pre-dissolution. For example, in *In re New York City Asbestos Litigation*, 116 A.D.3d 571 (N.Y. App. Div. 2014), a New York appellate court found that an insurer's obligation to provide coverage under a liability policy was not nullified on the mere happenstance that the insured corporation was dissolved when the latent injuries manifested themselves in its workers.

Courts have also allowed recovery against insurers of dissolved corporations on allegations of latent injuries in cases where the exposure occurred before the state's corporate dissolution statute was in effect and because the state's direct action statute recognized an exception that allowed suits directly against the insurance company (a) when the insured is insolvent, (b) when the insured is dead, and (c) when the insured cannot be served. See Marchand v. Asbestos Defendants, 44 So.3d 355 (La. Ct. App. 2010).

In cases where plaintiffs allege construction defects against a dissolved corporation, courts have allowed recovery of remaining insurance proceeds where the plaintiff sued the dissolved corporation for damages resulting from its pre-dissolution conduct, and the damages occurred or are discovered after the dissolution. In *Penasquitos, Inc. v. Superior Court*, 812 P.2d 154 (Cal. 1991), the Supreme Court of California found that although a party may not sue shareholders on a claim that arose after the dissolution, analysis of the California Corporate Code disclosed a legislative intent to permit parties to bring suit against dissolved corporations for damages that occur or are discovered after dissolution.

In cases where plaintiffs allege property damage due to contamination or pollution against a dissolved corporation, courts have allowed a suit to recover insurance proceeds where the corporation did not voluntarily dissolve. In *Bernstein v. Bankert*, 698 F. Supp.2d 1042 (S.D. Ind. 2010), a federal court in Indiana, found that a defunct defendant was not voluntarily dissolved pursuant to Indiana Business Corporation Law, but it was administratively dissolved because no notice of the dissolution was given to its creditors. Therefore, the defunct defendant was not entitled to the benefit of the two-year stat-

ute of limitations provided by Indiana law for voluntary dissolution.

REASONS COURTS DO NOT ALLOW RECOVERY OF INSURANCE POLICY PROCEEDS FROM DEFUNCT DEFENDANTS

Courts have not allowed plaintiffs in product liability claims to recover insurance policy proceeds where the cause of action accrued after the dissolution of the company, pursuant to the state's corporate dissolution statute. For example, in *Blankenship v. Demmler Mfg. Co.,* 411 N.E.2d 1153 (Ill. App. Ct. 1980), the Illinois Appellate Court held that a plaintiff may not reassert an action, even if discovery reveals that an insurance policy covers the injuries caused by the defective machine. The dissolved corporation may not be revived; thus, the insurance policy could not be reached.

Similarly, courts have not allowed plaintiffs alleging claims of latent injuries to recover where the case was filed against the dissolved corporate defendant outside the state's prescribed statutory grace period. *See e.g., Adams v. Employers Ins. Co. of Wausau,* 49 N.E.3d 924 (holding that Illinois statute permitting suit within five years after dissolution precluded employees' claims). Courts have also disallowed recovery on the same basis in cases involving property damage caused by contamination. *See, e.g., OXY USA, Inc. v. Quintana Production Co.*, 79 So.3d 366 (La. Ct. App. 2011) (holding that the plaintiff did not have a procedural right of action to seek contribution and indemnification from dissolved corporations' insurers more than three years after Texas corporations had been dissolved)

CONCLUSION

There are multiple reasons why a court will either allow or deny recovery of insurance policy proceeds from defunct defendants. However, insurers with remaining policy limits under policies sold to dissolved entities may benefit from investigating whether the applicable corporate law in the state where the dissolved entity was organized permits suits against dissolved corporations and, if so, under what circumstances.

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NEGLIGENT SECURITY

The Importance of Sound Policies, Procedures and Training Programs

Frank Gattuso Sweeney & Sheehan, P.C.

Safety and security have always been significant issues in the retail and hospitality industry. In recent years, we have seen increasing incidents of crimes, assaults, robberies, and aggressive behavior at retail establishments. This is especially so in the post-pandemic world we now live in. The unfortunate result is that property owners and managers now must be more vigilant than ever in managing their properties to keep their customers safe and secure, placing extra burdens on them. This article will explore the considerations necessary to avoid allegations of negligent security, which we now are seeing much more often. Further, we will discuss how sound policies, procedures and training programs are an important part of managing security.

FORESEEABILITY

A property owner must take reasonable steps to protect customers, employees, guests, and other invitees from potential dangers such as the criminal acts of third parties. In the negligent security context, foreseeability is the key component of the analysis. The property owner and manager must analyze and determine what protections are necessary to provide a reasonable level of safety and security. Therefore, the facts and circumstances surrounding their business are extremely important. This fact-intensive analysis requires each business or property to assess the potential security issues that could arise and place safeguards to protect against them. Those safeguards are found in strong policies and procedures developed from an assessment of what criminal acts are foreseeable on that property. In developing sound policies and procedures, there are many considerations, including an analysis of the type of business, the location of the business and the physical makeup of the premises where the business operates.

TYPE OF EVALUATION AND ANALYSIS NECESSARY

The type of business is a crucial factor in the analysis. The considerations for a grocery store or convenience store are different than those of a jewelry store, bar or nightclub. The type and level of security necessary for each type of business are dictated by the potential security problems

can arise. For example, bars and nightclubs often require security personnel to police the premises and provide a presence that deters criminal activity. The obvious risks a property owner is protecting against in such situations include unruly patrons, assault and battery. In addition, a jewelry store presents a different kind of risk as they usually contain high-value items that can be a target for criminals. Therefore, it is common to see a security guard presence on the premises. Naturally, a convenience store or grocery store has less risk for intoxicated individuals, so the level of security needed will be different.

The location of the business presents significant considerations that are extremely important when analyzing the level of security needed on the premises. The most obvious consideration will be an analysis of the crimes at the business and in the surrounding area. The types of crimes, the geographical proximity of those crimes and the temporal proximity of those crimes all play a role in determining the level of security necessary. If the business is in a high-crime area, protections such as bulletproof glass, security guards and emergency call buttons directly to the local police may be necessary. The more criminal activity that occurs on the premises and the surrounding area will result in a greater number of security precautions that will be needed on the premises.

The next consideration, the property itself and its configuration, provides the property owner or business operator with the greatest amount of control. Good lighting, working locks and doors, and alarm systems are all standards for secure premises. Most important, however, is the presence of a solid and functional CCTV system where the property is being monitored. Most of the failures seen in negligent security cases deal with the premises themselves. The design of the property is also important. Crimes often occur in areas where there are blind spots or areas of the premises that are not monitored but are accessible. While many experts dispute the effectiveness of cameras as a deterrent effect, missing or non-operating cameras often provide a foundation for finding liability in such cases. Failing to monitor those cameras also makes matters worse. Unattended and unmonitored parking garages are also fertile grounds for crimes.

SOUND POLICIES, PROCEDURES AND TRAINING PROGRAM

After you take all the foregoing into account, the next step is to produce a reasonable plan to provide the level of security necessary. Such a plan requires sound policies and procedures, as discussed above. This process can span anywhere from operational action items to using experts. To properly operate safe and secure premises, the business owner must consider the special circumstances of the premises and tailor the policies to those needs based on the circumstances specific to that property, such as its location and type of business. The plan must always include risk assessment in the beginning and continuing through the life of the business. Simply developing a plan at the outset is not enough. The business and property must be constantly evaluated. Analysis must be made as to whether the business has evolved into another one, the surrounding area has changed, or the business has seen increased criminal activities, to which the security plan must respond. Security analysis is never stagnant.

Risk assessment includes determining what strategies to implement to provide safe and secure premises. Such strategies include a CCTV system, good lighting, alarms, locks, security guards, etc. In addition, there must be continued analysis on a quarterly, monthly, and daily basis to ensure that those strategies are operating optimally. Many property owners use experts in assessing the needs of properties. Such experts include evaluations performed by security professionals, alarm system experts, CCTV experts, and criminologists. Larger companies tend to have such professionals on staff. However, smaller companies can easily access the same if they feel the need to.

Property owners and managers often overlook other ways to provide secure premises. First, having a clean and organized property gives the public a sign that the property is cared for and handled in a safe manner. Studies have shown that properties that are dilapidated and in an unkempt condition are targets for crime. Therefore, a strong maintenance program can help prevent criminal acts. Secondly, maintaining a close relationship with local law enforcement also reduces the risk of crimes at a business. Encouraging local police to come to the premises, offering the officers simple things like coffee and lunches to build the relationship, and engaging them when they are on the premises will increase the likelihood that they will stop by more often and stay longer. There is a natural deterrent effect of having law enforcement present.

The last part of the analysis is training your staff. While everything we have discussed so far is important, this topic is an essential part of the process. Developing a solid program with sound policies and procedures can only be done if it is designed and implemented through the training of employees. Training should include a written and/or computer portal program that outlines what needs to be done and how to handle issues such as intoxicated individuals, aggressive customers, robberies, assaults, and batteries. Training should also include on-the-job training where the employees are shown their duties and how to carry them out. Post orders are also important as security personnel can rely on them to show when and where they must be along with what they must do. Holding safety meetings periodically also encourages a safe environment. During the training process, questions must be encouraged and answered. Once training is completed, train some more and continually.

In the unfortunate event when a claim or lawsuit is filed against a business where negligent security is alleged, discovery will include investigations into what strategies were implemented, how they were installed on the premises, and how the staff was trained on them. I understand that this is much easier said than done, especially since the retail world must deal with continual turnover. Managers and other leaders of businesses are often challenged with having to run a profitable business while continually training their employees throughout their employment. Training must be a focus of any business as it will undoubtedly be a focus of any litigation.

CONCLUSION

Claims and lawsuits alleging negligent security will focus on the premises and the business that is being operated at that location. The plaintiffs will dive into what special circumstances the business is presented with and what protections, policies and procedures were implemented to address those concerns. Identifying the concerns, creating reasonable strategies to address them, and then following through with them are essential in refuting any such claim or lawsuit.

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JUST HOW LONG IS THE LONG ARM OF THE LAW?

The Supreme Court Takes on the Extraterritorial Application of the Lanham Act

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The Supreme Court's October Term 2022 certainly ended with a bang, not a whimper. Among the many high-profile cases decided at the end of the term, one case that did not generate as much media attention was *Abitron Austria GmbH v. Hetronic Int'l, Inc.*[1] Notwithstanding the lack of media attention, the Supreme Court's holding in Abitron is critical in that the holding will, undoubtedly, shape how U.S. businesses combat trademark infringement on the global stage, a multibillion-dollar problem which seems to grow larger each year.

As background, Hetronic is a U.S. manufacturer of remote controls for construction equipment featuring a distinctive black and yellow color scheme sold in more than 45 countries throughout the world. Abitron was originally a foreign licensed distributor for Hetronic products, which later reverse engineered Hetronic's products, believing that it held certain intellectual property rights connected to the Hetronic products, including trademarks. While Abitron did make some direct sales into the United States, the majority of Abitron's products were sold in Europe.

Hetronic commenced a trademark infringement lawsuit under the Lanham Act in the U.S. District Court for the Western District of Oklahoma. Despite Abitron's contention that Hetronic sought "an impermissible extraterritorial application of the Lanham Act," the case went to trial, and the jury awarded Hetronic $96 million in damages that included:

> …damages from Abitron's direct sales to consumers in the United States, its foreign sales of products for which the foreign buyers designated the United States as the ultimate destination, and its foreign sales of products that did not end up in the United States [and] a permanent injunction preventing Abitron from using the marks anywhere in the world.[2]

The Tenth Circuit narrowed the scope of the injunction to specific countries but otherwise affirmed the trial court, including, the extraterritorial application of the Lanham Act, reasoning that the impact of Abitron's conduct in the United States gave the United States a "reasonably strong interest" in the lawsuit.[3] The Supreme Court granted certiorari to resolve a split among the circuit courts concerning the Lanham Act's extraterritorial application.

The Supreme Court began its analysis by underscoring the well-established presumption against extraterritoriality and outlining the "two-step framework" used in the application of that presumption.[4] With respect to step one, the Court held that where "Congress has affirmatively and unmistakably instructed that the provision at issue should apply to foreign conduct… then claims alleging exclusively foreign conduct may proceed," subject to any limitations imposed by Congress.[5] With respect to step two, assuming that a "provision is not extraterritorial," the Court held that a determination must be made as to whether the lawsuit involves a domestic or foreign

application of the provision, the former being "permissible" and the latter being "impermissible." [6]

Applying this framework, the Court found that the provisions of the Lanham Act at issue were not extraterritorial and, thus, focused its analysis on step two of the framework, that is, whether the claims at issue involved a permissible domestic application of the salient Lanham Act provisions. In that connection, the Court determined that "the ultimate question regarding permissible domestic application turns on the location of the conduct relevant to the focus [of the statute]….[a]nd the *conduct* relevant to any focus the parties have proffered is infringing use in commerce, as the Act defines it." [8] The Court went on to state that under the Lanham Act, "the term use in commerce means the bona fide use of a mark in the ordinary course of trade, where the mark serves to identify and distinguish [the mark user's] goods…and to indicate the source of the goods." [9]

While the Court did not see fit to identify "the precise contours" of the phrase "use in commerce," Justice Jackson offered a concurring opinion which provided insight as to how that phrase may be understood. To that end, Justice Jackson reasoned that "[s]imply put, a 'use in commerce' does not cease at the place the mark is first affixed, or where the item to which it is affixed is first sold. Rather, it can occur whenever the mark serves its source-identifying function."[11] To make the point, Justice Jackson offered the following hypothetical:

> Imagine that a German company begins making and selling handbags in Germany marked "Coache" (the owner's family name). Next, imagine that American students buy the bags while on spring break overseas, and upon their return home employ those bags to carry personal items. Imagine finally that a representative of Coach (the United States company) sees the students with the bags and persuades Coach to sue the German company for Lanham Act infringement, fearing that the "Coache" mark will cause consumer confusion. Absent additional facts, such a claim seeks an impermissibly extraterritorial application of the Act. The mark affixed to the students' bags is not being "use[d] in commerce" domestically as the Act understands that phrase: to serve a source-identifying function "in the ordinary course of trade…."
>
> Now change the facts in just one respect: The American students ….resell [the bags] in this country, confusing consumers and damaging Coach's brand. Now, the marked bags are in domestic commerce; the marks that the German company affixed to them overseas continue "to identify and distinguish" the goods from others in the (now domestic) marketplace and to "indicate the source of the goods." So the German company continues to "use [the mark] in commerce" within the meaning of the Act, thus triggering potential liability under [the Lanham Act]…. [12]

Through that lens, one thing becomes evident - - the potential extraterritorial application of the Lanham Act will, without question, turn on the unique facts of each case. That said, there are certain takeaways that may be gleaned from the Supreme Court's *Abitron* decision.

First, trademark infringement involving only foreign conduct that does not affect U.S. commerce is likely not actionable under the Lanham Act. Thus, brand owners will undoubtedly benefit from protecting their trademarks in all countries where they may plan to do business to solidify their bases when enforcing their trademarks in those countries should the need arise. Indeed, there are cost-effective mechanisms in place by which U.S. businesses may register their trademarks in foreign jurisdictions.

Second, recognizing that, in certain circumstances, the Lanham Act may not provide a viable basis for U.S. businesses to pursue infringement claims against their foreign business partners in the United States, U.S. companies should review, and strengthen, their contractual agreements with their foreign business partners in order to provide an alternate pathway, through principles of contract law, to potentially enforce their rights in the United States.

Third, practically speaking, the Supreme Court's decision leaves much of the heavy lifting to the trial courts to begin to outline the "contours" of the "use in commerce" requirement in assessing the extraterritorial application of the Lanham Act. Notably, while not for the purposes of assessing whether the "use in commerce" requirement was satisfied, one trial court recently addressed the Supreme Court's decision within the context of assessing whether certain evidence of foreign trademark infringement was admissible at trial. In that case, the court concluded that the Supreme Court's decision in *Abitron* did not bar the plaintiff "from relying on its intended use of the foreign conduct in the present litigation as circumstantial evidence that" counterfeit sales were made in the United States.[13] Thus, while a party may not obtain damages for trademark infringement involving only foreign conduct, evidence of that foreign conduct may be useful to bolster claims of domestic infringement.

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1 143 S. Ct. 2522 (2023).
2 *Id. Intel. Grp., Inc. v. Constellation Energy Generation, LLC,* 2022 U.S. Dist. LEXIS 52020 (N.D. Ill. 2022).
3 *Id.*
4 *Id.* at 2528.
5 *Id.*
6 *Id.*
7 *Id.* at 2530-32.
8 *Id.* at 2531 (citations omitted) (emphasis in original). Notably, the Court disagreed with Justice Sotomayor's concurrence which advocated for the position that the Lanham Act provisions at issue "extend[ed] to activities carried out abroad when there is a likelihood of consumer confusion in the United States." *Id.* at 2537.
9 *Id.* at 2534 (internal quotations omitted).
10 *Id.* at 2534 n. 6.
11 *Id.* at 2535.
12 *Id.* at 2536 (internal citations omitted) (emphasis in original).
13 *Rockwell Automation, Inc. v. Parcop S.R.L.,* 2023 U.S. Dist. Lexis 123315, *8-9 (D. Del. 2023).

CONFIDENTIALITY GONE?

Maybe under *McLaren Macomb!*

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On February 21, 2023, the National Labor Relations Board ("NLRB" or the "Board") issued a ground-shaking decision in *McLaren Macomb*, 372 NLRB No. 58 (2023), effectively rewriting the enforceability of confidentiality and non-disparagement provisions in severance agreements for non-supervisory employees, regardless of union status. This article discusses the Board's ruling and its impact on current, past and future agreements.

In *McLaren Macomb*, the Board was asked to determine whether the Respondent, the operator of a hospital in Michigan, violated Section 8(a)(1) of the National Labor Relation Act (the "Act") when it offered severance agreements to employees it permanently furloughed as

a result of the COVID-19 pandemic (the "Pandemic"). Pursuant to federal regulations passed during the Pandemic, Respondent could not have non-essential employees working within the hospital. As such, it permanently furloughed eleven employees. Each furloughed employee was presented with a severance agreement that included broad confidentiality and non-disparagement provisions. Ultimately, the *McLaren* Board determined the severance agreements at issue were unlawful because they restricted and had a reasonable tendency to interfere with, restrain, or coerce the exercise of the affected employees' rights under Section 7 of the Act.

Section 7 of the Act guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities." 29 U.S.C.A. § 157.

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7" of the Act. 29 U.S.C.A. § 158

In reaching its decision, the *McLaren* Board overturned its prior decisions in *Baylor University Medical Center* 369 NLRB No. 43 (2020) and *IGT d/b/a International Game Technology* 370 NLRB No. 50 (2020) and returned to the "well-established principle that a severance agreement is unlawful if its terms have a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights, and that employers' proffer of such agreements to employees is unlawful." The *McLaren* Board concluded that its decision in *Baylor* was wrong because the *Baylor* Board deviated from long-established precedent and incorrectly changed the legal standard and analysis for determining whether severance agreements, and the employers who offer them, violate the Act. In *Baylor*, the Board held the test for whether an employer violated the Act or employees' rights under it must be based on a review of the employer's actions and the surrounding circumstances under which an employer offers a severance agreement to its employees. In fact, the *Baylor* board reasoned that employers could freely offer employees severance agreements that are unlawful on their face without violating the Act because the *Baylor* board viewed severance agreements and their terms as irrelevant and not dispositive for triggering employer violations of the Act. According to the *Baylor* Board, employers violate the Act when their actions are coercive or unduly influence employees into signing severance agreements. The *McLaren* Board concluded that this methodology was wrong and reasoned that the *Baylor* Board's line of thinking and approach went against long-established NLRB precedent and rules. It further concluded that the *Baylor* Board failed to justify or provide any public policy interests that supported its decision to consider an employer's actions and animus towards employees' Section 7 rights over the terms of severance agreements in determining employer liability under the Act.

Ultimately, the *McLaren* Board held that the mere act of offering a severance agreement with terms that have "a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights" under the Act can constitute an unfair labor practice – regardless of other employer conduct or external circumstances (e.g., employer motive, employer animus against Section 7 activity, or whether or not the employee accepts the agreement). It reasoned that employees should not have to choose between accepting benefits promised in a severance agreement and exercising their rights under the Act. Specifically, the *McLaren* Board concluded that the confidentiality provision in the separation agreements at issue was unlawful and violated the furloughed employees' Section 7 rights because they broadly prohibited each employee from disclosing the existence of the agreement or its terms to any third party, including even from disclosing the agreement to the NLRB. Lastly, the *McLaren* Board additionally concluded that the non-disparagement provision in the separation agreements was unlawful and violated the furloughed employees' Section 7 rights because it was not limited to a reasonable time period and broadly prohibited each employee from speaking to their former coworkers. The Board reasoned that "public statements by employees about the workplace are central to the exercise of employee rights under the Act."

So, what does this mean, and how does the Board's decision in *McLaren* affect severance agreements, and employer and employee rights going forward? The key takeaways from *McLaren* are as follows. First, confidentiality and non-disparagement provisions are still lawful and binding as long as they do not violate employees' rights under the Act and are reasonably limited in time and scope. This means employers can avoid violating the Act if they offer employees severance agreements with confidentiality provisions that permit employees to disclose the existence of the agreement and its terms to government agencies like the NLRB for lawful and legitimate purposes. For example, to permit the employee to file a claim with the NLRB to challenge the validity of the severance agreement itself. Or permitting disclosure of employer information to allow a terminated employee to assist the NLRB in an active investigation involving their former employer.

Second, the NLRB's decision in *McLaren* distinguishes the rights of managerial and supervisory employees versus non-managerial and non-supervisory employees. After *McLaren*, non-supervisory employees should be given the least amount of restrictions under the confidentiality and non-disparagement terms of a severance agreement. Consequently, severance agreements offered to non-supervisory employees should have non-disparagement provisions that allow those employees to make disparaging statements against their employer as long as they are not maliciously false or reckless. For example, the following language would be acceptable after *McLaren*: "Employee agrees not to make any statements that are maliciously or recklessly false." While employers can still place greater restrictions on the disparaging remarks supervisory employees can make against them post-*McLaren*, employers should tailor their non-disparagement provisions for supervisory and non-supervisory employees accordingly. Third, after *McLaren*, the "mere act" of offering a severance agreement with unlawful terms is an unfair labor practice that violates the Act and will subject employers who do so to liability and potential litigation.

In sum, although employers and employees have conflicting interests at the moment of an employee's separation from employment, employers can still protect themselves and their business interests by narrowly tailoring confidentiality and non-disparagement provisions in the severance agreements they offer their employees that permit employees to make reasonable disclosures for lawful and legitimate purposes and disparaging remarks that are not maliciously false.

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THE LANGUAGE OF SAFETY

A Dive into the Framework of Risk Communication

An Nguyen, Ph.D. S-E-A, LTD

"Beware! To touch these wires is instant death. Anyone found doing so will be prosecuted."
– Sign at Railroad Station

"If you are seated in an exit aisle and are unable to read this, please ask a flight attendant to reseat you."
– Airlines Safety Booklet

"Remember: Objects in mirror are actually behind you."
– Bike Helmet Mirror

When warning labels miss the mark, it can provide a good laugh, but there are often serious consequences at stake when these precautionary statements do not function in the intended manner. One of the goals of warning labels or safety manuals is to deliver important hazard information to consumers. When a product-related injury happens, the warning systems are often evaluated on their accuracy, adequacy and appropriateness in communication. Analyzing warning labels in a communication framework can help manufacturers understand how people interpret safety information and potentially improve the effectiveness of their risk communication.

GRICE'S MAXIMS

Grice's Maxims stands as one of the most influential works in the study of meaning and communication. These encapsulate the assumptions people hold in communication and illustrate how the interpretation of an utterance hinges not solely on the explicit meaning of what has been said, but also on the implicit meaning of what can be inferred. The maxims can be divided into four main categories: Quantity, Manner, Relevance and Quality.

MAXIM OF QUANTITY

The main ideas of the Maxim of Quantity are 1) do not be under-informative and 2) do not be over-informative, both of which play a role in evaluating the adequacy of warning labels.

Consider the scenario where Bob has been to France and Russia, and someone asks him what countries he has visited. If Bob responds with only "France," despite being technically true, this response is inappropriate because it can mislead the listener into assuming that Bob hasn't visited any other country besides France. Likewise, consumers typically assume that the manufacturer will provide all necessary product

information, thus, any missing information can lead to wrong conclusions and, consequently, possible injuries. For example, while it is true that ingesting lead is harmful, a label stating, "Harmful if swallowed," could be inferred to mean "Safe to touch or inhale." A label stating "contains peanuts" could be interpreted as "contains no other allergens such as almonds." The absence of phrases like "may contain allergens" or "may contain traces of nuts" could suggest to the consumers that the manufacturer has thoroughly tested and ascertained the absence of other allergens. It is important to note that consumers interpret labels using not only the information presented but also the information that is missing.

The second part of the maxim is relevant to cases with open and obvious hazards. For example, a kitchen knife can cause cuts and lacerations, yet knives don't typically come with warnings because a reasonable user can infer the hazard from the sharp blade or knowledge of knife usage. Since safety information is already inherently available to the consumer, the manufacturers don't need to be over-informative by putting a warning label on knives.

Typically, following the American National Standards Institute's (ANSI) Z535 recommendation, a comprehensive label would include 1) a signal word with the corresponding color, 2) a description of the potential hazard, 3) possible consequences of non-compliance, and 4) instructions to prevent or respond to the hazard. For example, a product with an electrical hazard may have a warning label that reads: (1) DANGER! (2) Hazardous voltage. (3) Contact will cause burn or electrical shock. (4) Turn off and lock out system power before servicing. Including all these components helps people better understand the causal relationship between their actions and the possible outcomes, thereby increasing compliance with the warning.

For example, a warning label that only says, "do not use this product on hot surfaces," leaves consumers to speculate on their own what would happen if they do not comply. A consumer may think, "perhaps the heat will reduce the life of the product," and consequently dismiss the warning, as the product is cheap enough that the individual can easily afford another one. Since the consequence of non-compliance is perceived to be minimal, the consumer proceeds to use the product on a grill, causing an explosion. The consumer could argue that the lack of information has contributed to the decision to ignore the warning. On the other hand, the presence of too many warnings or excessive content on a warning can lead to information overload or inefficient information processing. Ultimately, the decision of what to include and what to omit should be carefully considered in light of many factors, such as the characteristics of the audience and the context of product use. In some cases, a simple "Sharp blades" warning may be sufficient because most people can infer the danger (cuts and injuries) and appropriate precautions (wearing guards or avoiding contact). In other cases, minimally including all ANSI-suggested information is necessary. Manufacturers may want to study and understand their target population to determine how much information is the right amount of information.

MAXIM OF MANNER

The Maxim of Manner is concerned with how to say what needs to be said: be brief, be orderly, avoid ambiguity and avoid obscurity of expression. This is especially important in risk communication, as people often spend limited time studying warning labels. Keeping the warning message concise and using simple words can improve comprehensibility, thereby contributing to compliance.

The more information packed in a sentence, the higher the risk of misinterpretation. For example, a 2013 research study by Wolf et al. reported that many people misinterpreted the warning "You should avoid prolonged or excessive exposure to direct or artificial sunlight while taking this medication" as "do not leave medicine in the sun." Since the size of a prescription bottle is small, this warning can be hard to read. Coupled with the redundancy use of adjectives, consumers may simply scan for a few keywords, leading to misinterpretation. When replaced by a simplified warning ("limit your time in the sun"), the rate of correct interpretation jumped from 73% to 93%.

Word choice and sentence structure are also important. "May cause cancer" is likely to be easier for an average consumer to understand than "May contain carcinogen." A phrase like "Toxic by inhalation and if swallowed" is comprehensible but not as effective as "toxic if inhaled or swallowed" or "toxic by inhalation or ingestion" because the use of similar linguistic structures (both nouns or both verbs) can speed up sentence processing.

MAXIM OF RELATION

The Maxim of Relation pertains to relevance. Some products include information such as product standards and certifications in the warning section with no space or line break. While important, such information is not directly relevant to the hazard(s) and is better displayed elsewhere to avoid confusion.

The maxim of relation can also come into play when considering the location of the warning label. On large machines or equipment, warning labels are typically placed close to their respective hazards. Users are more likely to comply when they perceive that the warning is relevant to their task at hand than when the warning is general.

MAXIM OF QUALITY

The Maxim of Quality states that the information communicated should be accurate and truthful. In recent years, there has been an increase in the number of lawsuits over false advertising or misleading labels, such as products advertised to have 30mg of protein when they actually contain only 15mg or snacks labeled as gluten-free when containing gluten. Such misrepresentation is in violation of the Maxim of Quality and is potentially harmful to the consumer.

This maxim also suggests not to communicate what you lack evidence for. A product may not be advertised as being the safest tool if no testing or comparative analysis has been done with other comparable products on the market. A manufacturer who has only evaluated their product's choking hazards on children aged 2 or 5 may want to refrain from stating that the toy is safe for children between ages 3 and 8.

CONCLUSION

A warning that uses an ambiguous word does not always mean it is not helpful at all, and a comprehensive warning that contains all recommended information does not necessarily mean it is effective in motivating people to comply. The warning message should be evaluated in context, as a whole, and in consideration of other factors such as the user's needs, the time the user has to process the information, the cost of compliance, and so on. Communication in general, and risk communication in particular, is a complex process that involves the interaction of the explicit message with many hidden elements like the assumptions, beliefs, and prior knowledge of both parties. Effective risk communication starts with effective communication, and using a communication framework like Grice's Maxim can be helpful in evaluating safety information.

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THAT'S DISCOVERABLE!
HOW MEDICAL FACTORING COMPANIES IMPACT YOUR CASE

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An emerging and dangerous trend in personal injury litigation is the use of medical factoring companies to artificially increase damages. Medical factoring companies (frequently called medical financing or medical lien companies, referred to herein as "MFC(s)") initially present an attractive option for plaintiff attorneys and their injured clients because they allow for medical treatment with no up-front costs. MFCs can contract with medical providers, injured plaintiffs, and plaintiff attorneys. MFCs typically require an injured plaintiff to sign a contract akin to a "Client Payment, Security, and Assignment Agreement," which allows the plaintiff to receive treatment from providers in the MFC's "network" in exchange for giving the MFC a lien for the entire amount billed to be paid by the plaintiff following a judgment or settlement of the personal injury claim.

A sampling of MFC websites includes the following advertisements:

- "Our team of experienced professionals not only connects attorneys and patients with our highly vetted network of medical providers but does so in a way that allows for a better overall case outcome." https://wshcgroup.com/ (last visited Sep. 5, 2023).
- "If you are currently facing an active personal injury case or denied workers' compensation claim, we can help provide you with: Chiropractic Care, Physical Therapy, Surgery Procedures, Diagnostic Imaging, Other Medical Care." https://omni-healthcare.com/plaintiff/ (last visited Sep. 5, 2023).
- "Medical providers are able to sell their existing lien receivables and convert them to cash. Omni Healthcare will buy the bill of active personal injury patients and absorb the risk, so the provider can focus on patient care." https://omni-healthcare.com/medical-providers/ (last visited Sep. 5, 2023).
- "With healthcare factoring, medical companies can continue to save lives without having to worry about limited cash flow." https://fundbox.com/resources/guides/medical-factoring/ (last visited Sep. 6, 2023).
- "You provide outstanding care. We make sure there's no outstanding risk." https://wshcgroup.com/ (last visited Sep. 5, 2023).

This arrangement incentivizes the MFC's network providers to issue highly inflated bills for services rendered because the MFC has purchased the provider's accounts receivable at a discounted rate. This

allows the provider to insure against future losses by selling its accounts receivable before the risk of recovery is presented.

Now, the MFC, as the assignee of all rights for the amounts billed, is entitled to repayment directly from the injured plaintiff. The MFC's profits, therefore, lie in the difference between what is billed and what is paid—the more the provider bills, the more money to be made. In *Huston v. United Parcel Serv., Inc.*, the MFC purchased $240,849.44 of the plaintiff's medical bills for the discounted rate of $81,589 but pursuant to the plaintiff's contract, the plaintiff remained liable to the MFC for the full amount billed regardless of whether the plaintiff was successful in litigation or not. In this example, the MFC made a profit of almost triple what it paid for the accounts receivable.

At first blush this lack of upfront costs is the attractive option for an injured plaintiff, but in practice, the results have ugly consequences. For the plaintiff, the use of MFCs leads to rushed and unnecessary medical treatment as in-network providers seek to exponentially increase their profits through inflated medical expenses before selling the accounts receivable to the MFC at a discounted rate. Additionally, even if the injured plaintiff is unsuccessful in litigation, the MFC still gets their pound of flesh by requiring the unsuccessful plaintiff to pay the MFC for the purchase of the accounts receivable. This is likely an amount far greater than the provider would have ultimately collected from the injured plaintiff.

Importantly, medical expenses not only make up the bulk of an injured plaintiff's economic damages, they also act as a grounding point for all non-economic damages. Plaintiffs frequently utilize the multiplier method to articulate a monetary figure of non-economic damages to request from the jury. Consequently, the higher the economic damages, the higher the overall recovery. The increased practice of utilizing MFCs is driving up the overall value of plaintiffs' personal injury claims, resulting in nuclear verdicts based on inflated medical expenses.

Courts are split as to the admissibility of the discounted rates paid by the MFC for the accounts receivable to rebut the reasonableness of plaintiffs' medical bills. However, practitioners should at minimum obtain this information through discovery to evaluate their case and identify experts needed to assess and rebut a plaintiff's inflated medical damages. MFCs and plaintiffs' attorneys generally advance two arguments to avoid disclosure: (1) collateral source rule; and (2) trade secret privilege.

The collateral source rule is nothing more than a red herring argument as most injured plaintiffs still remain fully liable to the MFC for the entire amount billed by the provider and therefore receive no benefit from the MFC, warranting the application of the collateral source rule. Courts have used this logic to both admit and exclude MFC agreements. One Colorado court held that despite not being a collateral source, the MFC agreement was inadmissible as more prejudicial than probative because plaintiff remained liable for the entire amount billed, therefore introduction of the discounted rate would confuse the jury. *Anchondo-Galaviz v. State Farm Mut. Auto. Ins. Co.,* 2021 WL 1087467 (D. Colo. Feb. 8, 2021). Whereas a Louisiana court, who likewise found MFC agreements were not evidence of collateral sources, conversely held the MFC agreements were admissible for a jury to determine damages if they concluded medical expenses were incurred in bad faith and could also be used to impeach the credibility of Plaintiff's healthcare providers. *Collins v. Benton*, 2021 WL 638116 (E.D. La. Feb. 17, 2021). *See also Shaw v. Shandong Yongsheng Rubber Co. Ltd.*, 2020 WL 1974762 (D. Colo. Apr. 24, 2020) (holding MFC liens are not subject to the collateral source rule and amounts billed versus amounts paid are relevant and proportional for discovery purposes).

Trade secret privilege presents the greater obstacle to overcome as, unlike the collateral source rule, it bears some merit. The factors required to establish a trade secret vary state by state, often with shifting burdens, thus requiring the requesting party to overcome the presumption of a trade secret privilege. This presents a challenge as the totality of information in MFC agreements is largely unknown. In New Mexico, an MFC's argument that "its only source of income [being] the margin between what it pays and what it recoups," was sufficiently compelling for the court to deny defendants' motion to compel on the basis of trade secret privilege. *Heaton v. Gonzales*, 2022 WL 772923, at *4 (D.N.M. Mar. 14, 2022). However, as demonstrated in *Huston*, the MFC stood to gain nearly triple what it paid for the plaintiff's accounts receivable. Without additional, and comparatively more invasive, discovery into the MFC's reported earnings, a defendant remains in the dark and unable to combat potentially baseless arguments regarding "sources of income." A Texas court has found that one solution is entering into a confidentiality agreement with the opposing party, which is sufficient to protect the MFC's interests in preserving trade secrets while providing the defendant with the relevant information. *Galaviz v. C.R. England Inc.*, 2012 WL 1313301 (W.D. Tex. Apr. 17, 2012). When dealing with the assertion of trade secret privilege, consideration of a reasonable confidentiality agreement (with a carve out for the sitting judge) should be the first step.

The authors have found the following three arguments to be the most successful for establishing the relevance of MFC agreements and obtaining the same in discovery. First, the discounted rates are impeachment evidence as to the reasonableness of plaintiff's medical bills. *Moore v. Mercer,* 447, 209 Cal. Rptr. 3d 101 (2016) (finding trial court erred in denying motion to compel MFC agreements as they "bear probative value" in determining the reasonable value of the services.). Second, the agreements may support the defense that treatment was provided/received in bad faith and therefore are likely to lead to the discovery of admissible evidence. *Collins v. Benton*, 2021 WL 638116 (E.D. La. Feb. 17, 2021). Third, secret agreements between MFCs and plaintiff attorneys frustrate the litigation and settlement process. *Bowling v. Brown*, 2021 WL 3666848 (W.D. La. Aug. 18, 2021) ("Keeping the amount of that reduction secret from the court and opposing parties frustrates the litigation process and casts an unnecessary cloud over the medical expenses for purposes of settlement. Production of the agreements and the amounts evens the playing field and facilitates resolution.").

The increased use of MFCs is driving up the cost of personal injury claims and cloaking litigation in secrecy. Transparency in amounts billed versus amounts paid by MFCs and later collected from injured plaintiffs is necessary to combat potentially dangerous overtreatment, avoid nuclear verdicts, and reach reasonable resolutions.

— Authors extend a special thanks to Schuyler Willard for his valuable research for this article.

Christie Geter focuses her practice in the areas of insurance defense litigation, where she defends clients in trucking and transportation matters, general liability, wrongful death, and civil rights, obtaining favorable decisions in both criminal and civil courts.

Ashley J. Cook focuses her practice in the areas of transportation defense, commercial litigation, general civil litigation, insurance defense, coverage matters, and medical malpractice, where she applies a strong client-focused approach to law.

LITIGATING AT THE NETHERLANDS COMMERCIAL COURT AND THE RECOGNITION AND ENFORCEMENT OF ITS JUDGMENTS

Mike Joshua van de Graaf and **Lotte te Linde** Dirkzwager

INTRODUCTION

Inspired by the London Commercial Court and the rise of international commercial courts such as the Dubai International Financial Centre Courts and the Singapore International Commercial Court, the Netherlands Commercial Court (the NCC) was established on January 1, 2019, in order to swiftly and effectively resolve international civil (commercial) disputes.

The NCC, forming part of the Amsterdam District Court (the NCC District Court) and the Amsterdam Court of Appeal (the NCC Court of Appeal), is located at the Amsterdam Palace of Justice and tries cases of a diverse nature with an international aspect, such as private sales of pledged shares and disputes regarding a party's contractual obligations under sales and distribution agreements.

In this article, we focus on the following topics:

- the NCC's jurisdiction;
- court fees; and
- a brief overview of the recognition and enforcement of NCC judgments.

TYPE OF CASES TO BE HANDLED BY THE NCC

The NCC – meaning both the NCC District Court and the NCC Court of Appeal – has jurisdiction over a civil or commercial matter in connection with a particular legal relationship within the autonomy of the parties. In essence, this means that the dispute at hand needs to be related to civil law in a broad sense, such as contractual disputes, claims in tort, property law disputes and corporate law matters. Depending on the facts and circumstances, disputes regarding insurance, finance, intellectual property, public procurement, competition, telecommunications transportation and insolvency-related matters such as director's liability in bankruptcy may also be within the scope of 'civil or commercial matters'.

However, the NCC does not hear disputes that are subject to arbitration or the exclusive jurisdiction of any other foreign or Dutch chamber/court, such as the Enterprise Chamber of the Amsterdam Court of Appeal for certain types of corporate law-related cases, the Patent Chamber of the District Court of The Hague for cases involving among others infringement and validity of Dutch and European patents designated for the Netherlands, or the Maritime Chamber of the Rotterdam District Court which deals in short with maritime, transport and trade matters.

It furthermore is required that the 'civil or commercial matter' at hand is not subject to the jurisdiction of a Dutch subdistrict court. This would be the case if (i) the value of the 'civil or commercial matter' claim is 25,000 euros or less or (ii) the matter relates to employment, consumers, tenancy or hire purchase.

INTERNATIONAL SCOPE OF THE NCC CASES

The NCC will not handle a matter that is solely national in scope. This means that the dispute at hand must relate to a civil or commercial matter with an international aspect, which will – without limitation – be the case if:

- at least one of the parties to the proceedings is a resident outside the Netherlands or is a company established abroad or incorporated under foreign law, or is a subsidiary of such company;
- a treaty or foreign law is applicable to the dispute, or the dispute arises from an agreement prepared in a language other than Dutch;

- at least one of the parties to the proceedings is a company, or belongs to a group of companies, of which the majority of its worldwide employees work outside the Netherlands;
- at least one of the parties to the proceedings is a company, or belongs to a group of companies, of which more than one-half of the consolidated turnover is realized outside of the Netherlands;
- at least one of the parties to the proceedings is a company, or belongs to a group of companies, of which securities are traded on a regulated market outside the Netherlands; or
- the dispute involves legal facts or legal acts outside the Netherlands.

NCC CHOICE OF FORUM CLAUSE

In order to create competence for the NCC to have conduct of an 'international civil or commercial matter' it is required that the parties in dispute have expressly agreed in writing that proceedings will be before the NCC in the English language.

If, for example, an agreement in which the designation of the NCC was included in a party's general terms and conditions and was accepted tacitly by the other party (Party B), it does not satisfy the requirement that Party B has expressly agreed to such clause for NCC proceedings. In practice, this means that the NCC has, in principle, no competence to handle the dispute, unless at the time the agreement was concluded, or at a later time, there is express acceptance in writing of the clause in the general terms and conditions, showing agreement for the proceedings to be before the NCC in English. By drafting contracts, including general terms and conditions, it should therefore be taken into account that Party B should explicitly consent to such choice of forum clause. Depending on the facts and circumstances of the case at hand, this might be done by pointing out the choice of forum clause in email correspondence and having the person authorized to represent Party B explicitly sign for acceptance of such clause.

COURT FEES

Each party in proceedings is obliged to pay a fixed court fee in the amount of (as of the publication date of this article):

- EUR 7,928 for NCC District Court summary proceedings;
- EUR 15,856 for NCC District Court main proceedings;
- EUR 10,571 for NCC Court of Appeal in summary proceedings;
- EUR 21,141 for NCC Court of Appeal main proceedings;

all regardless of the duration of the case or the amount of the claim involved.

The losing party will, however, be ordered to compensate the successful party for the court fees it had to pay in full.

RECOGNITION AND ENFORCEABILITY OF NCC JUDGMENTS

NCC judgments have the same legal status as a 'regular' judgment rendered by a Dutch court. In practice, this means that NCC judgments are not only enforceable in the Netherlands but also in other European Union countries and the Kingdom of the Netherlands (being the Netherlands, Aruba, Curaçao and Saint Maarten) without any declaration of enforceability being required. With respect to other European Union countries, the recognition and enforcement of NCC judgments is based on the EU Regulation 1215/2012 of the European Parliament and of the council of December 12, 2012, on jurisdiction and the recognition of judgments in civil and commercial matters (the Brussel I Recast Regulation).

The fact that an NCC judgment is immediately enforceable by the competent enforcement authority in the country where the judgment needs to be enforced, means, in concrete terms, that if the debtor (of your client) owns assets within the European Union and/or the Kingdom of the Netherlands, a condemnatory judgment of the NCC can be enforced without further form of process. In view thereof, and depending on the facts and circumstances at hand, we suggest with some regularity to clients to opt for the NCC when it does business in a commercial relationship with a foreign party with assets in the European Union and the vehicular language of the contracting parties is in English.

The enforcement of an NCC judgment outside the European Union is governed by applicable treaties and/or conventions to which the Netherlands is a party, as well as general private international law rules in the jurisdiction where enforcement is sought. Regarding the recognition and enforcement of judgments, there is no treaty or convention concluded between the Netherlands or the European Union on the one hand and the United States (U.S.) on the other hand. This makes it uncertain whether an NCC judgment can be easily enforced in the U.S. and depends on the assessment subsequently made by a U.S. court under U.S. enforcement law. The U.S. court is not required – in the absence of a treaty or convention – to automatically recognize the content of the NCC judgment. In view thereof, and to the extent there are (possibly) only possibilities of recourse on the other party to the contract in the U.S. (in the future), opting for the NCC is not an obvious choice. In such cases, we typically suggest to clients to include an arbitration clause in the contract, as the U.S. and the Netherlands do, in principle, mutually recognize each other's arbitral awards without an extensive process.

CONCLUSION

In this article we focused on the key characteristics of the NCC for resolving civil and commercial disputes involving an international element, as well as the recognition and enforcement of NCC judgments.

If parties wish to potentially proceed for a regular Dutch Court in English, we – depending on the facts and circumstances at hand – largely advise opting for the NCC as the exclusive choice of forum. One of the key questions to be answered in that respect is whether there are sufficient assets of the debtor (to be expected) within the European Union and/or the Kingdom of the Netherlands, mainly in view of the ease of enforcement of NCC judgment within these countries. If such assets are to be expected outside the European Union and/or the Kingdom of the Netherlands and parties wish to proceed in English no matter the costs involved, we normally advise to include an arbitration clause in the contract as more than 160 nations are party to the 1958 New York Convention which governs the recognition and enforcement of arbitral awards. This means that the nations, in principle, do mutually recognize a 'foreign' arbitral award without an extensive process.

Mike Joshua van de Graaf is a senior corporate lawyer at Dirkzwager and mainly advises on (cross-border) mergers and acquisitions and joint ventures and represents clients in cases involving complex matters in the areas of corporate governance, corporate litigation and on other corporate aspects. In addition, he regularly publishes on developments in the fields of company and corporate law.

Lotte te Linde is a senior corporate and commercial lawyer at Dirkzwager. Lotte's daily practice consists of advising on and assisting with disputes within companies, assisting with national and international transactions (buying and selling of companies), and advising and litigating on commercial contracts (such as distribution, franchise and agency agreements).

UNVEILING TRUTH: *The Power of Investigative Services in the Claims Process*

Shannon Thompson Petroni
Marshall Investigative Group

In the complex world of settlements and litigation, the path to truth is often shrouded in shadows. Risk managers and defense attorneys face the daunting task of uncovering critical information that can make or break a case. This is where the role of investigative services becomes indispensable, serving to illuminate the hidden truths and empower informed decisions. In this article, we will explore the compelling reasons why partnering with an investigative services group can be the turning point in your claims process.

THE HUMAN ELEMENT: A KEEN EYE FOR TRUTH

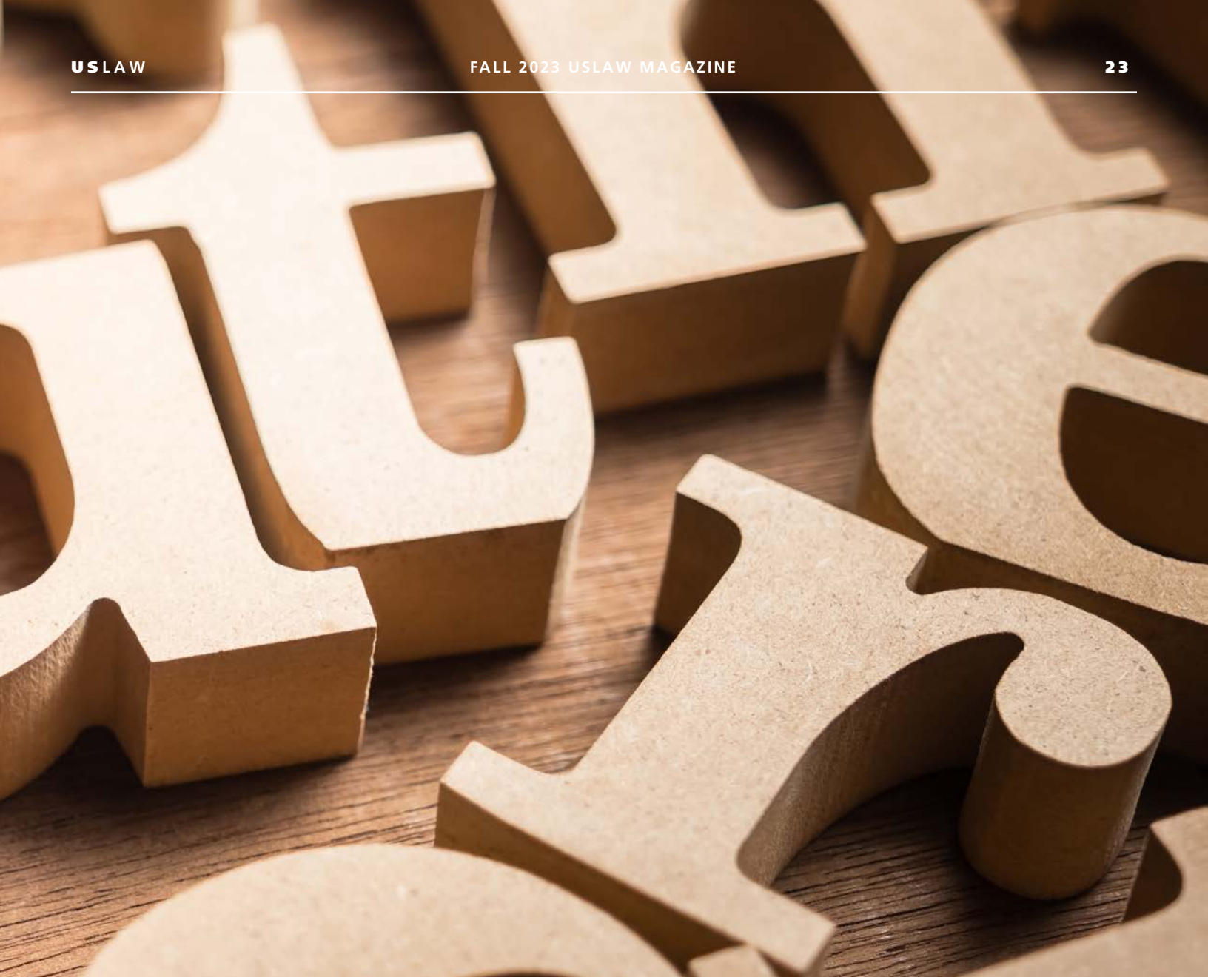
In the digital age, technology may be advancing rapidly, but it is the human touch that remains irreplaceable. When partnering with an investigative group, you rely on skilled professionals who are relentless truth-seekers driven by their passion to uncover details. With an astute eye for patterns, human psychology, and a commitment to ethical practices, these investigators excel in piecing together a comprehensive picture. While technology can aid in gathering data, it is the human element that can provide the crucial insights and analysis that will be beneficial to a case.

TAILORED SERVICES: A SOLUTION FOR EVERY CHALLENGE

One size does not fit all, especially in the realm of claims. Unlike generic approaches, investigative practices offer tailored solutions that cater to the specific needs of each case. This boutique-style approach allows investigators to collaborate closely with clients, understanding their unique requirements and crafting investigative strategies that allow them to serve as an extension of the client's team. By going beyond generic social media reviews and employing techniques such as background checks and internet presence reviews, investigators work with clients to determine the most effective methods for capturing the information needed. This consultative approach can help move a case forward more quickly and equips the legal team to make the best decisions they can regarding the case.

CONSISTENT COMMUNICATION: BUILDING TRUST, ONE CONVERSATION AT A TIME

Effective communication is crucial in any claims process, and it's important that your investigative services team understands the importance of timely updates and open conversation. Clients should not be left in the dark, wondering about progress or outcomes. Throughout the investigation, your investigative partner should maintain consistent communication, ensuring that you are always informed, prepared, and confi-



dent in your decision-making. This level of transparency and trust-building strengthens the client-investigator relationship and allows for better collaboration and understanding, which leads to a better resolution.

CONSULTATION: EMPOWERING INFORMED DECISIONS

The value of an investigation goes beyond merely gathering evidence; it lies in the insights it provides. Investigators don't just present information; they assess and review it to determine if additional measures are needed. By providing expert consultation, investigators empower their clients to make informed decisions throughout the claims process. This collaborative approach not only helps uncover the truth but also offers guidance on the best course of action based on the available information. With the support of investigative services, clients gain an edge that can turn the tide in their favor during settlements and litigation.

A GUIDING LIGHT IN THE MURKY WATERS OF CLAIMS

When claims involve high stakes and reputations, relying on experienced investigators can be the difference between success and failure. Trusted investigators act as guiding lights, navigating through the murky waters of litigation. Their expertise helps to uncover crucial information and establish a solid foundation for legal proceedings. By leveraging their extensive knowledge and proven methodologies, they offer invaluable support in building robust cases and ensuring fair outcomes.

The importance of investigative services in the claims process cannot be overstated. The truth is not always readily apparent, and dedicated and experienced investigators bridge the gap between uncertainty and clarity. When choosing to use investigative services, clients can uncover the truth and position themselves for favorable outcomes in their legal endeavors.

As a seasoned claims consultant and business development leader, Shannon Thompson Petroni serves Marshall Investigative Group in providing invaluable support to legal professionals, risk managers, insurance leaders, and claims executives. Her expertise lies in delivering comprehensive investigative services that empower clients to make well-informed decisions on their cases. Drawing from her background as a claims consultant at Lockton and Ametros, where she played a pivotal role in facilitating claims closure for various companies, Shannon brings a wealth of strategic insight and operational proficiency to the table.

(NOT SO) EXPERT TESTIMONY: *How Jurors Make Sense of Questionable Science*

Alexa Hiley, MA IMS Consulting

Our legal system places an enormous burden on the laypeople it recruits as jurors. Despite a lack of expertise, they must evaluate the merit of each piece of evidence throughout trial, including complex technical information presented by expert witnesses. Unsurprisingly, jurors often struggle with expert testimony, and their appraisals are guided by factors that have little to do with the testimony's content—one reason that outdated and unproven "junk sciences" continue to find traction in courtrooms across the country. Understanding these factors, and appreciating how jurors are processing what they hear, allows us to coax the most out of expert witnesses.

THE *WILL* AND THE *WAY* TO EVALUATE TESTIMONY

How jurors assess expert witness testimony can be traced back to basic information processing patterns. To critically evaluate any message, those on the receiving end must have both the *will* (motivation to engage with the information) and the *way* (ability to understand the information).

The former varies widely both between and within individuals. While most people are motivated to engage with messages of personal importance or relevance, some people are inherently more inclined to seek out cognitively demanding tasks (what psychological research has dubbed a high *need for cognition*). Jurors with a higher need for cognition are more likely to expend the required mental resources to critically engage with the concepts delivered by experts, as well as be more sensitive to variations in evidence quality and overall case strength.

The question of ability, the *way*, presents a separate challenge. Even the most motivated jurors lack the specialized training and knowledge needed to make a truly independent assessment of experts' opinions. Put simply, jurors cannot always sort the wheat from the chaff. They may assign undue weight to less valid types of evidence or conclusions built upon weaker foundations. As a result, their verdict decisions are susceptible to the influence of any "junk science" that evades the courts' safeguards.

HOW "BAD" SCIENCE ENTERS THE COURTROOM

Under the *Daubert* standard, trial judges provide that primary safeguard. Serving as gatekeepers, judges gauge whether a particular expert's testimony meets the criteria for admissibility. As part of this process, *Daubert* asks judges to consider whether the testimony is the product of sound scientific methodology. Invalid or otherwise irrelevant scientific evidence, in theory, fails the test and is ruled inadmissible. However, research suggests that trial judges are no more capable of differentiating between valid and invalid science than the lay jurors for whom they are supposed to be the first line of defense.

Jurors—and judges—have difficulty distinguishing "good" and "bad" science because they lack an understanding of what constitutes "good" science in the first place. Absent a basic familiarity with the relevant methodological and statistical concepts, they rely on the experts themselves both to present the scientific evidence and to adequately explain its meaning. Junk, submitted convincingly, can sneak right by.

FACTORS INFLUENCING EXPERT CREDIBILITY

Worse, jurors can receive explicit guidance on how to critique the science yet remain unable to detect major threats to its legitimacy. One study presented mock jurors with information about various features that can affect a study's validity (e.g., control groups or a double-blind research design) only to find that the jurors' subsequent verdict decisions were not significantly affected by variations in the validity of the expert witness' research.[1] More concerningly, jurors do not always adjust their decisions, even when experts admit to potential shortcomings in their own reasoning.[2]

Jurors instead search for other credibility clues. They take signals both from who the expert is and how the expert delivers the information, letting the content itself become secondary. An expert's professional credentials, particularly their level of education (e.g., advanced degrees) and years of experience, become a proxy for their scientific credibility. Jurors may also rely on witness characteristics such as confidence and likability. Interestingly, research shows that jurors respond more positively to experts who project a medium level of confidence than a high level. Experts demonstrating the latter can be perceived as arrogant or more likely to overstate their conclusions.[3]

THE PROBLEM WITH COMPETING EXPERTS

Although researchers have investigated how to better equip lay jurors to handle expert witness testimony, the problem has proven to be persistent. One method—hiring an expert to discredit the testimony of the opposition's expert—has an intuitive appeal, but the evidence on the effectiveness of so-called "dueling experts" is mixed at best. Some studies have even suggested that the strategy can backfire. Conflicting testimony from two equally qualified experts may encourage jurors to develop skepticism towards experts generally, rather than sensitizing them to flaws in the opposing expert's methodology. The experts may effectively cancel each other out.

Further exploration of this effect indicates that the second expert's presence negatively affects jurors' perception of the "general acceptance" of the science. Strong, contradictory opinions from experts who seem similarly qualified leave jurors with the impression that there is no expert consensus.

The apparent lack of agreement in the field affects jurors' beliefs about the reliability of the evidence, which in turn influences verdict decisions.[4] If opposing counsel can locate one expert to testify in support of their theory of the case, it can undermine the impact of another expert whose opinions reflect the broader consensus.

Hearing two experts present different conclusions may also exacerbate jurors' impressions that expert witnesses are "hired guns," selling their testimony to the highest bidder with little regard for scientific integrity. Experts who tend to testify for only one side or for the same party across multiple cases amplify this impression, particularly if opposing counsel highlights their court history or hourly rate.

CONCLUSION

How jurors make sense of expert witness testimony can significantly impact a case's outcome. If the jury is unwilling and/or unable to understand the information, or if they simply do not trust the witness presenting it, even the most compelling evidence falls flat. It is, therefore, crucial to appreciate the underlying psychology of jurors' response to expert testimony when selecting and preparing witnesses.

While hard and fast rules are elusive, the literature offers some guidance on maximizing an expert's effectiveness. First, attorneys should seek out highly credentialed experts who have firsthand experience not only with the subject area but with the specific case at hand. In a personal injury case, for instance, a doctor will be more credible to jurors if they have examined the plaintiff versus merely reviewing medical records. As for experts' delivery, witness preparation sessions should emphasize presenting dense science in familiar terms without coming across as condescending. These sessions can also help experts feel more at ease on the stand, allowing them to project confidence at trial. In this manner, we can appeal to the factors that jurors weigh most highly, even in the face of an opponent's less-than-legitimate science.

1 McCauliff, B.D., & Kovera, M. B. (2003) Need for cognition and juror sensitivity to methodological flaws in psychological science. *Unpublished Manuscript, Florida International University*, Miami, FL.

2 McQuiston-Surrett, D., & Saks, M.J. (2009). The Testimony of Forensic Identification Science: What Expert Witnesses Say and What Factfinders Hear. *Law & Human Behavior*, 33, 436–453. https://doi.org/10.1007/s10979-008-9169-1

3 Cramer, R. J., Brodsky, S. L., & DeCoster, J. (2009). Expert witness confidence and juror personality: their impact on credibility and persuasion in the courtroom. *The Journal of the American Academy of Psychiatry and the Law*, 37(1), 63–74.

4 Scobie, C., Semmler, C., & Poreve M (2019). Considering forensic science: individual differences, opposing expert testimony and juror decision making. *Psychology, Crime & Law*, 25(1), 23-49. https://10.1080/1068316X.2018.1488976

IMS Associate Jury Consultant Alexa Hiley, MA assists top litigators by providing insight into how juror attitudes, opinions, and beliefs affect the outcome of a case. A doctoral candidate with a research-driven perspective, Alexa enables clients to create data-centric strategic messaging for their complex matters.

FACES of USLAW

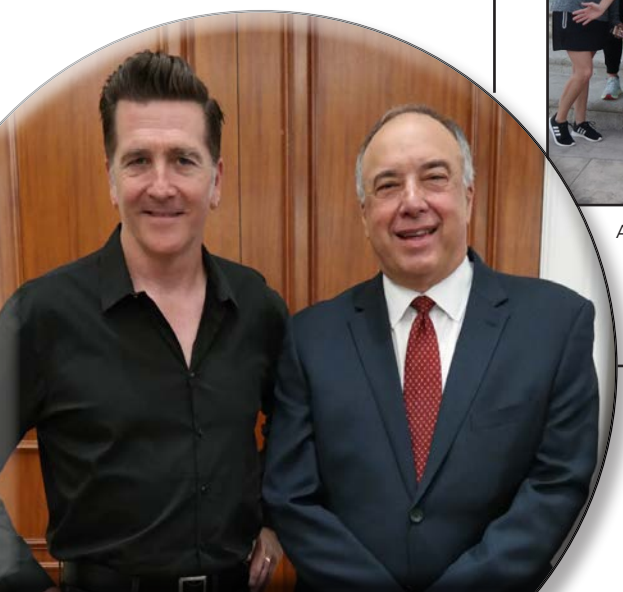
Leadership change: Immediate Past Chair **Mandy Ketchum** of Dysart Taylor in Kansas City, Missouri, and current USLAW Chair **Oscar Cabanas** of Wicker Smith in Miami.

Six USLAW members rotated off the USLAW Board of Directors in October and were honored at the fall member meeting in Dana Point, California. Pictured left to right: **Mert Howard** (Hanson Bridgett LLP), **Larry Schechtman** (Amundsen Davis LLC), **Stan Fitts** (Strong & Hanni), **Tom Oliver** (Carr Allison) and **Brad Wright** (Roetzel & Andress LPA). *Not pictured: Jeff O'Hara (Connell Foley, LLP)*

The **2023-24 USLAW NETWORK Board of Directors** was named at the fall member meeting in Dana Point, California, and they gathered for an impromptu group photo before the start of the Fall 2023 USLAW NETWORK Client Conference.

Attendees at the Fall 2023 USLAW NETWORK Client Conference enjoyed a sunrise **USLAW/ S-E-A Live Better Walk** to Salt Creek Beach and back in Dana Point, California.

Simmons Perrine Moyer Bergman PLC Attorney **Nick AbouAssaly** was named "Mayor of the Year" among cities with more than 2,000 in population by the Iowa Mayors Association. The award was presented at the Association's business meeting held during the Iowa of League of Cities Annual Conference & Exhibit in Cedar Rapids. The Mayor of the Year Award was created to recognize individuals who have provided extraordinary public service to their community, the League, the Iowa Mayors Association, and local government. The award has two population categories: Under 2,000 and Over 2,000. AbouAssaly is a real estate attorney in the Cedar Rapids office of Simmons Perrine Moyer Bergman PLC.



USLAW Chair **Oscar Cabanas** of Wicker Smith in Miami (pictured, right) with Fall 2023 USLAW NETWORK Client Conference keynote speaker **Adam Steltzner**, chief engineer of the current Mars 2020 Mission & Rover Perseverance that has the ultimate objective of determining if life has existed on Mars.

USLAW NETWORK names **Mindy White**, chief counsel, litigation and employment for Quanta Services, Inc., as the **2023 USLAW NETWORK Bill Burns Award** recipient. USLAW created the award to annually recognize a client who has shown outstanding service and dedication to USLAW. The award is named after Bill Burns, a longtime transportation risk management and litigation leader for Landstar System, a Jacksonville, Florida-based transportation company. Immediate Past Chair Amanda Pennington Ketchum (pictured left) of Dysart Taylor in Kansas City, Missouri, presented the award.

USLAW NETWORK created the **Champions Award** to annually recognize an individual/organization who has shown outstanding service and dedication to the philanthropic efforts of the USLAW NETWORK Foundation. The inaugural award was presented to **Nick Christin** of Wicker Smith in Miami (pictured with Mandy Ketchum, immediate past USLAW chair from Dysart Taylor in Kansas City, Missouri) during the Fall 2023 USLAW NETWORK Client Conference in Dana Point, California.

Kevin Fritz, past chair of USLAW NETWORK from Lashly & Baer, P.C. in St. Louis, Missouri, has been named the recipient of the **2023 USLAW NETWORK O'Hagan Award**. The award is named after Jim O'Hagan, a founding member of USLAW, and is given annually by the USLAW Chair to a USLAW member(s) who demonstrates outstanding service and commitment to the organization's guiding principles, mission, and objective. Amanda Pennington Ketchum of Dysart Taylor in Kansas City, Missouri, presented the award during USLAW NETWORK's recent annual fall member business meeting in Dana Point, California.

Lisa Langevin (pictured 5th from left in back row), a partner from **Kelly Santini LLP** in Ontario, Canada, participated in the 2023 GAA World Games in Derry, Northern Ireland, as the goalie for the Canadian Women's Gaelic Football Team. Lisa was lucky to play alongside Kelly Santini legal assistant/law clerk, **Daphne Ballard** (front row, 2nd from right), who has also been playing Gaelic Football for years and was a full forward on this team. The Canadian Team played nine games in five days, advancing to the finals and losing in double overtime to the U.S. What is Gaelic Football, you might ask; well, it is one of the national sports of Ireland played on a pitch similar to that of rugby with a round ball (think Aussie Rules Football but with a lot less tackling). Despite competing against most women half her age, Lisa continues to keep battling it out on the field, pushing women to keep competing no matter what their age. Lisa shares, "Maintaining a healthy and active lifestyle is crucial in our profession for all aspects of our health, so keep "playing" as long as you can."

Frank Gattuso (center) of **Sweeney & Sheehan, P.C**. in Philadelphia is a member of the Resources for Human Development (RHD) Main Line Wine Gala Committee. The gala event took place on October 12, 2023, at Appleford Estate in Villanova, Pennsylvania. RHD is a national non-profit human services organization whose broad mission is to provide caring, effective, and innovative services that empower people of all abilities to build better lives for themselves, their families, and their communities. RHD is responsible for administering 135 human services programs across 13 states.

Members of **Baird Holm** gathered to run (and walk) in the 42nd Annual Corporate Cup in Omaha. Baird Holm is proud to be a long-time supporter of the American Lung Association's dedication to lifesaving research, education programs, and advocacy efforts.

Baird Holm launches new program: Community Works

In 2023, Baird Holm (BH) launched a new program called BH Community Works. This firm-wide program provides opportunities for our attorneys and staff to donate their time, talents, and financial resources to different organizations in the community. So far this year, BH Community Works has partnered with Access Period, Boys and Girls Club of the Midlands, and Here for Her for donation drives, and Salvation Army and Heart Ministry Center for volunteer efforts.

BH COMMUNITY WORKS

On August 11, **Neil Bardack, Rachel Patterson, Andrea Sheeran, Sean Herman, Bianca Ko, Amanat Singh** and **Shandyn Pierce** of **Hanson Bridgett** in San Francisco volunteered at the Tenderloin Community. The teachers really appreciated support and the smiles and energy were contagious!

On August 22**, Hanson Bridgett**'s **Kate Bendick** attended a volunteer event in San Francisco, working with Catholic Charities and T. Rowe Price.

Lewis Roca has been named the recipient of the **2023 Outstanding Corporate Community Award** by the Colorado Hispanic Bar Association (CHBA). This accolade, presented annually, is a testament to the firm's unwavering commitment to the Hispanic community. It underscores Lewis Roca's dedication to fostering diversity, equity, and inclusion within corporate practices, showcasing its ongoing efforts to make a meaningful impact. The award was presented on August 12, 2023, during the En el Jardín Annual Banquet & Member Meeting at the Denver Botanic Gardens. Accepting the award on behalf of the firm was partners Ben Ochoa and Nicole Kunnemann. Pictured from left to right: **Caileb Booze, Angela Vichick, Nicole Kunnemann, Michael Nosler** and **Ben Ochoa**.

BAIRDHOLM LLP ATTORNEYS AT LAW

Baird Holm Lobbyists **Vanessa Silke** and **Hannes Zetzsche** celebrate continued legislative success for craft beer and microdistillery clients with Governor Jim Pillen's signature on LB376. Under the first bill adopted in 2023 by the Nebraska Legislature, and the first bill signed into law by Governor Jim Pillen, a group of measures largely benefitting the alcohol industry's small producers have gone into immediate effect. Baird Holm attorneys have developed strong relationships with legislators and key stakeholders to ensure passage of common-sense legislation to grow the craft beer and microdistillery markets.

RIVKIN RADLER ATTORNEYS AT LAW

Rivkin Radler attorney **Marie Landsman** and her husband, Barry, were honored at Island Harvest's **29th Annual Taste of the Harvest** Event at Crest Hollow

Country Club in Woodbury, New York. They were awarded the "Above and Beyond" award for their collective work and dedication over the years to Island Harvest and its mission to eliminate hunger and food waste on Long Island.

On October 6, **Eric Santos, Frank Izzo, Benjamin Wisher** and **Joseph Pidel** of **Rivkin Radler** attended Starry Starry Night, an event to support the Walkway Over the Hudson in Poughkeepsie and its continued development.

Faces from around the USLAW circuit...

Throughout the year, USLAW members and clients lead facilitated discussions at USLAW events from coast to coast. Here are some of the recent leading voices.

Thomas S. Thornton, III, Carr Allison (Birmingham, AL); Thomas G. Williams, Quattlebaum, Grooms & Tull PLLC (Little Rock, AR); Meghan M. Goodwin, Thorndal, Armstrong, Delk, Balkenbush & Eisinger (Las Vegas, NV); Michael J. Judy, Dysart Taylor (Kansas City, MO); Sean R. Burnett, Snyder Burnett Egerer, LLP (Santa Barbara, CA)

Constantine "Dean" G. Nickas, Wicker Smith (Coral Gables, FL); Elizabeth G. Stouder; Jon D. Groussman, J.D., president, Lowers & Associates

Noble F. Allen, Hinckley Allen (Hartford, CT); Merton A. Howard, Hanson Bridgett LLP (San Francisco, CA); Frank Gattuso, Sweeney & Sheehan, P.C. (Philadelphia, PA)

Thomas S. Thornton, III, Carr Allison (Birmingham, AL); Colleen E. Hastie, Traub Lieberman (Hawthorne, NY); Jacqueline Bushwack, Rivkin Radler LLP (Uniondale, NY)

Pamela S. Hallford, Carr Allison (Dothan, AL); Jessica Dark, Pierce Couch Hendrickson Baysinger & Green, L.L.P. (Oklahoma City, OK); Meghan M. Goodwin, Thorndal Armstrong (Las Vegas, NV); Michael J. Judy, Dysart Taylor (Kansas City, MO)

Earl W. Houston, II, Martin, Tate, Morrow & Marson, P.C. (Memphis, TN); Margot N. Wilensky, Connell Foley LLP (New York, NY); Nicholas A. Rauch, Larson • King, LLP (St. Paul, MN); Nick Polavin, PhD, IMS Consulting.

Shyrell A. Reed, Moran Reeves & Conn PC (Richmond, VA); Kenneth A. Perry, Amundsen Davis LLC (Chicago, IL); Molly E. Mitchell, Duke Evett, PLLC (Boise, ID)

George Wang, Duan&Duan (Shanghai, China); Sheryl J. Willert, Williams Kastner (Seattle, WA); Dr. Jan Tibor Lelley, BUSE (TELFA); Julie A. Proscia, Amundsen Davis LLC (Chicago, IL)

Bryan P. Couch, Connell Foley LLP (Newark, NJ); Jessica L. Fuller, Lewis Roca (Denver, CO)

J. Michael Kunsch, Sweeney & Sheehan, P.C. (Philadelphia, PA); Moira H. Pietrowski, Roetzel & Andress (Akron, OH); Constantine "Dean" G. Nickas, Wicker Smith (Miami, FL)

Thomas L. Oliver, II, Carr Allison (Birmingham, AL); Heather L. Rosing, Klinedinst PC (San Diego, CA)

Stella Lellos, Rivkin Radler LLP (Uniondale, NY); Karen A. Verkerk, Dirkzwager N.V. (Arnhem, Netherlands) (TELFA); John D. Cromie, Connell Foley LLP (Roseland, NJ)

Molly Arranz, Amundsen Davis LLC (Chicago, IL); Shea Sisk Wellford, Martin, Tate, Morrow & Marston, P.C. (Memphis, TN)

Julie Z. Devine, Lashly & Baer, P.C. (St. Louis, MO); Rosemary Enright; J. Scott Ferris, Coleman, Chavez & Associates (Roseville, CA)

Caroline Kinsey, General Counsel, VP of Compliance and Brand Protection – Ontel Products Corporation; Richard Konrath, Vice President and General Counsel – CNH Industrial America; Jonathan S. Storper, Hanson Bridgett LLP (San Francisco, CA)

Peter T. DeMasters, Flaherty Sensabaugh Bonasso PLLC (Morgantown, WV); Sheryl J. Willert, Williams Kastner (Seattle, WA); Kevin J. Visser, Simmons Perrine Moyer Bergman PLC (Cedar Rapids, IA)

Jack J. Laffey, Laffey, Leitner & Goode (Milwaukee, WI); Christopher M. Cotter, Snyder Burnett Egerer, LLP (Santa Barbara, CA); Stephen J. Marshall, Franklin & Prokopik, P.C. (Baltimore, MD)

Sandra L. Rappaport, Hanson Bridgett LLP (San Francisco, CA); Aretta K. Bernard, Roetzel & Andress (Cleveland, OH)

Nicholas A. Gumpel, Director - Executive and Professional Liability, GB Specialty; David S. Wilck, Rivkin Radler LLP (Uniondale, NY)

Molly Arranz, Amundsen Davis LLC (Chicago, IL); Joshua W. Praw, Murchison & Cumming LLP (Los Angeles: Douglas W. Clarke, Therrien Couture Joli-Coeur L.L.P. (Montreal, QC, Canada)

Joseph S. Goode, Laffey, Leitner & Goode LLC (Milwaukee, WI); Kevin R. Gardner, Connell Foley LLP (Roseland, NJ); Rodney L. Umberger, Williams Kastner (Seattle, WA)

René Mauricio Alva, EC Rubio (Chihuahua, Mexico); Dr. Jan Tibor Lelley, BUSE (TELFA); William M. Davis, Bovis, Kyle, Burch & Medlin, LLC (Atlanta, GA); Merton A. Howard, Hanson Bridgett LLP (San Francisco, CA)

Robert P. Brooks, Adler Pollock & Sheehan, P.C. (Providence, RI); Steven A. Rowe, Poyner Spruill LLP (Rocky Mount, NC)

Alexandra C. Wells, Lashly & Baer, PC (St. Louis, MO); Peter T. DeMasters, Flaherty Sensabaugh Bonasso PLLC (Morgantown, WV); Dan L. Longo, Murchison & Cumming, LLP (Los Angeles, CA)

John W. Halpin, Laffey, Leitner & Goode LLC (Milwaukee, WI); Maggie A. Ziemianek, Hanson Bridgett LLP (San Francisco, CA)

Matthew J. Hundley, Moran Reeves & Conn PC (Richmond, VA); Sarah Thomas Pagels, Laffey, Leitner & Goode LLC (Milwaukee, WI); J. Tyler Dinsmore, Flaherty Sensabaugh Bonasso PLLC (Charleston, WV)

Robyn F. McGrath, Sweeney & Sheehan, P.C. (Philadelphia, PA); Barbara Barron, MehaffyWeber (Houston, TX); Julie A. Proscia, Amundsen Davis LLC (Chicago, IL)

Richard E. McLawhorn, Sweeny Wingate & Barrow, P.A. (Columbia, SC); Catherine G. Bryan, Connell Foley LLP (Newark, NJ); Nicholas A. Rauch, Larson King, LLP (St. Paul, MN); Christopher E. Cotter, Roetzel & Andress (Cleveland, OH)

Fun times outside the USLAW classroom...

After the programming ends, attendees turn to the local sights and sounds for some local fun.

Nashville event with American singer-songwriter Meghan Linsey

Touring the Ryman Auditorium, the beloved Nashville landmark and world-renowned concert hall.

Participants in the inaugural USLAW pickleball event

Dolphin and whale watching off Dana Point

Pedaling made easy with a scenic e-bike tour

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firms ON THE MOVE

John Tarantino of **Adler Pollock & Sheehan P.C.** in Rhode Island received the Edward V. Healey, Jr. Lifetime Achievement Award from Justice Assistance. This award honors those individuals who have demonstrated a lifetime of committed service and citizen contribution to the justice profession and public interest.

Baird Holm Partner **Randy Stevenson** was elected a Fellow of the American Bar Foundation (ABF). ABF is an honorary society of lawyers, judges, legal scholars and law faculty who have demonstrated outstanding dedication to the highest principles of the legal profession.

Partner **Lindsay Lundholm** has been selected to become a 2023 Nebraska State Bar Foundation Fellow based on her integrity and character, distinction in the profession, contributions to the profession and community, and contributions to the Bar Foundation. This prestigious honor is bestowed annually on just 30 lawyers in the state.

Partners **Allison Balus, Scott P. Moore** and **Scott S. Moore** were appointed members of The American Employment Law Council (AELC).

Associate **Hannes Zetzsche** has been selected to participate in the 2023-24 Nebraska State Bar Association (NSBA) Leadership Academy.

Partner **Kara Stockdale** completed the Leadership Omaha program with Class 45.

Abby Mohs, partner, will provide her insights about health care law as she joins the board of directors at OneWorld Community Health Centers, which is dedicated to providing quality care to all people.

Jackie Pueppke, partner, was selected to serve on the 2024 CREW Network Foundation Scholarship Selection Committee. The CREW Network is a global organization that advances women in commercial real estate through business networking, industry research, leadership development, and career outreach.

Carr Allison's **Russ Allison** is serving his second term on the Volunteer Lawyers Birmingham Board of Directors. Carr Allison is the only firm to have a dedicated day each month on which a pool of 10 to 12 lawyers staff the Help Desk.

Pam Hallford of Carr Allison in Dothan, Alabama, received the 2023 Emerging Leader Award at the Trucking Industry Defense Association's (TIDA) Annual Seminar.

Jenny T. Baker of Carr Allison (Southern Mississippi) was sworn in as the Mississippi State Bar president in July.

Jennifer Martinez of **Hanson Bridgett** was selected as a Law Firm Diversity, Equity and Inclusion Champion by Corporate Counsel magazine. She was one of seven women honored.

Hanson Bridgett's **David Casarrubias** has been elected as the Chair of the Young Lawyers Division for the Hispanic National Bar Association.

Nancy Dollar is a tax law specialist in California. This is quite a feat, as only about 300 out of more than 190,000 California attorneys hold this designation. The State Bar of California certifies attorneys as specialists who have gone beyond the standard licensing requirements.

firms ON THE MOVE *(Continued)*

Shandyn Pierce of Hanson Bridgett was added as an ex officio member of the Bar Association of San Francisco's Appellate Law Section's Executive Committee.

Sean Herman was appointed as vice chair of the American Bar Association's Environment, Energy and Resources Section's Water Quality and Wetlands Committee.

Dan Spector was appointed as the Chair of the Litigation Committee of the Trust and Estates Executive Committee (TEXCOM) for the California Lawyers Association

Patrick E. Foppe, member of **Lashly & Baer, P.C.** in St. Louis, Missouri, was recently elected second vice president of the Transportation Lawyers Association (TLA). TLA has over 925 attorney members from around the world, who practice in all aspects of transportation law.

Michele Smith (pictured left) of **MehaffyWeber** in Houston, Texas, was sworn in as president of the International Association of Defense Counsel (IADC), and colleague **Gayla Corley** was sworn in as president of the Texas Association of Defense Counsel (TADC).

Patrick Sweeney of **Sweeney & Sheehan** became the president of the Defense Research Institute (DRI) on October 27, 2023. DRI is the largest international membership organization of attorneys defending the interests of businesses and individuals in civil litigation with 29 substantive law committees. Before becoming DRI president, Sweeney served as president-elect and a member of DRI's Board of Directors. In addition, he served on DRI's Law Institute, which is responsible for implementing educational programming for the organization.

Denise Montgomery of Sweeney & Sheehan, P.C. in Philadelphia was elected secretary for the Pennsylvania Defense Institute for the term running August 2023 through August 2024. Pennsylvania Defense Institute membership includes lawyers, executives of insurance companies, self-insurers, and independent adjusters across the State.

Therrien Couture Joli-Cœur and Groupe TCJ acquired Immétis Services Juridiques, a leader in business immigration and international mobility in Quebec. Immétis thus becomes Groupe TCJ's fourth subsidiary, along with TCJ, Edilex and On Règle. TCJ also adds to its team with members of the Quebec-based law firm **Gilbert Simard Tremblay** joining TCJ. Their expertise includes civil and professional liability insurance, construction and commercial litigation.

successful RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS

VERDICTS

Baird Holm LLP (Omaha, NE)

Baird Holm's Creditors' rights team obtains favorable decision from New York Bankruptcy Court

Baird Holm's Creditors' Rights team, led by partner Jeremy Hollembeak, obtained a favorable decision from the New York Bankruptcy Court last week. The Court held that litigation brought by the firm's client against a non-debtor party that sold it bankruptcy claims under false pretenses was not barred by a previously confirmed Chapter 11 plan and would be allowed to proceed in state court.

This decision is a must-read for those staying current on the evolving scope of exculpation provisions and third-party releases permitted in Chapter 11. Visit https://lnkd.in/ejR49QRx to learn more.

Bovis Kyle Burch & Medlin LLC (Atlanta, GA)

Bovis Kyle obtains defense verdict in Gwinnett County slip-and-fall trial

Bovis Kyle attorneys Christina Gulas and Edward "Ward" Pankowski obtained a defense verdict following a three-day jury trial in Gwinnett County, Georgia. The trial was the culmination of a lawsuit that stemmed from a December 26, 2015, fall at the defendant's used car lot.

During closing arguments, plaintiff's counsel asked the jury to award $640,000 to the plaintiff in damages. The defense focused on the plaintiff's history of slip and falls dating back to 1991, as well as subsequent falls and accidents that caused the plaintiff similar injuries as those alleged during trial.

"We blew up a photo of the pavement where the plaintiff fell and highlighted testimony from the plaintiff that she could have seen this and nothing was distracting her," attorney Gulas said. "The jury ultimately agreed that this accident was about the plaintiff's negligence, not anything our client did."

The key argument, Gulas explained, was showing the jury that the pavement where the plaintiff fell was a "static condition" and an "open and obvious" hazard.

"For the last five years, our firm has been working on this case with an eye towards this day," Gulas said. "This is a victory for everyone on our team, for every defense attorney who is willing to try these cases, and most importantly, for our client."

Flaherty Sensabaugh Bonasso PLLC (Charleston, WV)

Summary judgment obtained for physician In Circuit Court of Greenbrier County

Flaherty Sensabaugh Bonasso PLLC attorneys Sam Fox and Morgan Villers obtained an award of summary judgment for their client in the Circuit Court of Greenbrier County, West Virginia. The client, a Greenbrier County physician, had been sued for alleged medical negligence involving the interpretation and analysis of a tissue specimen obtained through a needle biopsy. The Court granted summary judgment on the basis that the plaintiff had failed to prove that the physician had proximately caused the alleged injury. As such, the plaintiff's claims against the physician were dismissed.

Hanson Bridgett LLP (San Francisco, CA)

Hanson Bridgett Prevails for Golden Gate Bridge Highway & Transportation District and Bay Area Toll Authority

On October 5, 2023, a litigation team led by Hanson Bridgett partner Alexandra Atencio secured dismissal of a putative class-action lawsuit on behalf of long-time clients the Golden Gate Bridge Highway & Transportation District (District) and the Bay Area Toll Authority (BATA).

"The dismissal is a testament to the collaboration and resilience that so many of our attorneys put forth throughout the lengthy duration of this case," said Atencio. "We are thrilled about this victory for our clients, and I am thankful for the assistance, hard work, and sacrifice from all who contributed to this great win."

The case, dating back to 2017, involves the electronic toll collection system used on Bay Area toll bridges. The plaintiffs filed a putative class action alleging that the agencies collected and used personally identifiable information in violation of state law. The court denied the plaintiffs' motion for class certification, finding that the claims lacked merit as a matter of law. However, one of the plaintiffs continued to pursue her remaining individual claims. Because the plaintiff lacked a viable legal theory to pursue at trial, the court vacated the October 9 trial date and stated it will issue judgment in the agencies' favor. This is a decisive victory for the toll agencies after a protracted litigation process that lasted nearly six years.

The Hanson Bridgett team assisting Atencio included associates, David Casarrubias and Thomas Rivera, and law clerk, Jake Zarone.

successful RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS *(Continued)*

Hinckley Allen (Hartford, CT)

Hinckley Allen successfully represented media companies in action related to CT State Police ticketing scandal

Hinckley Allen attorneys successfully represented two Connecticut media companies in their efforts to access information regarding a highly publicized Connecticut State Police ticketing scandal. The Connecticut State Police Union sought an injunction in state court seeking to block the Connecticut State Police, in response to media inquiries, from releasing the names of 130 state troopers allegedly implicated in falsifying traffic tickets to skew racial profiling data.

Hinckley Allen attorneys, representing two local publications, The Connecticut Mirror and The Day, intervened in the state court action and opposed the injunction. After argument, the Court issued a ruling agreeing with the intervenors and defendants that the Court does not have authority to block the release of the trooper names in response to a media request. The Court agreed that Connecticut law requires the Freedom of Information Commission, the administrative agency tasked with administering the Freedom of Information Act in Connecticut, first determine whether the records may be withheld before the court has any power.

Lashly & Baer, P.C. (St. Louis. MO)

Lashly & Baer earn trio of defense victories

Patrick E. Foppe, member of Lashly & Baer, P.C. in St. Louis, Missouri, recently obtained summary judgment for American Millenium Insurance Company (AMIC). Zurich and Amazon had sued AMIC in an insurance dispute seeking more than $10 million in damages. The United States District Court for the Western District of Missouri found that AMIC owed no legal duties to Zurich and Amazon in AMIC's handling of an underlying wrongful death trucking accident case. Amazon Logistics, Inc., et al. v. Tedros Lake, et al., 4:2020cv00763-FJG (W.D.Mo. September 22, 2023).

In another matter concluded on September 22, 2023, Lashly & Bear attorneys Michael Barth and Katherine Vojas obtained a defense verdict for their healthcare clients in the Circuit Court of the City of St. Louis. The case involved claims of academic medical practice and allegations that the Department of Ophthalmology failed to timely diagnose and treat a retinal detachment in a severely autistic, non-verbal adult. The defendants denied the allegations and asserted at trial that they were unable to perform a complete eye examination and the presenting complaint of "red eye" did not require further testing, such as an examination under anesthesia to examine the back of the eye. The defendants also presented evidence that the retinal detachment ultimately diagnosed about 3 and half months later was an old injury that had been present for at least a year or possibly years. After a week-long trial where plaintiffs requested nearly $5 million, the St. Louis City jury deliberated for 30 minutes before rendering its decision in favor of the defendants.

Finally, on August 8, 2023, attorneys William Magrath and Riley Brown obtained a unanimous defense verdict for their clients. Plaintiff claimed the defendants were medically negligent in not explicitly warning him to protect his numb limb from extremes of hot and cold after administering a popliteal nerve block. Plaintiff burned his foot on a car heater leading to an amputation. Defendants denied any negligence and challenged plaintiff's theory of causation. The St. Louis County jury deliberated for less than an hour before rendering a unanimous defense verdict.

MehaffyWeber (Houston, TX)

Attorneys obtain summary judgment, defense verdict

Warren Wise and Michele Smith of MehaffyWeber in Houston recently obtained summary judgment in a multi-million-dollar, on-the-job personal injury lawsuit pending in the 129th Judicial District Court of Harris County, Texas. In the lawsuit, the plaintiff alleged he fell off the second floor of a home during construction and, as a result, brought negligence and gross negligence claims against the general contractor on the project, seeking in excess of $8 million in past and future medical expenses. Among other things, the plaintiff alleged the general contractor was negligent in failing to provide a safe workplace for the plaintiff, failing to warn the plaintiff that a dangerous condition existed that required extra precautions be taken, and acting in reckless disregard for the safety and welfare of its employees, agents, sub-contractors, and all workers, including the plaintiff.

In developing their argument that the general contractor did not owe any legal duty to the plaintiff, Wise and Smith elicited testimony from numerous witnesses that the general contractor did not supervise the plaintiff on the job site, did not supply the plaintiff with any tools or equipment, and did not tell the plaintiff (1) what to do on the job site, (2) how to perform his job duties, or (3) how to be safe while working. Yet, the plaintiff alternatively argued that the general contractor owed the plaintiff a legal duty on the ground that the general contractor had a contractual right to control the means and methods of the plaintiff's work on the project. Wise and Smith convinced the judge that the plaintiff's argument was without merit based on Texas case law.

In another matter, MehaffyWeber's Gayla Corley received a defense verdict in the 131st District Court in Bexar County, Texas. The case involved a minor rear-end collision on Loop 410 near Callaghan in morning rush hour traffic. The allegations were negligence and respondeat superior. Plaintiff had undergone a laminectomy and fusion at L5/S1 and sought $5.3 million in damages. The jury was out about 35 minutes before returning a no-negligence finding. They didn't reach the damage question.

successful RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS *(Continued)*

Wicker Smith (Central Florida)

Spengler and Woodard obtain defense verdict in general liability case

Wicker Smith Orlando partners Kurt Spengler and Melissa Woodward and associate Jacqueline Bourdon recently obtained a defense verdict in a general liability case in Osceola County, Florida. Plaintiff in this case alleged that while she was dining at a popular national restaurant chain, a single arm of a paddle fan unexpectedly fell and struck her, causing injuries to her neck, back and left shoulder. She underwent neck surgery under a letter of protection and claimed medical bills in excess of $200,000. Liability, causation and damages were all contested at trial. The defense disputed that the fan struck the guest at all and further argued that the injuries she claimed were pre-existing, based on a review of her significant medical history. Plaintiff's last demand before trial was $300,000, and she asked the jury for $2 million at closing. After less than an hour of deliberation, the jury returned a complete defense verdict.

Wicker Smith (South Florida)

Wicker Smith obtains defense verdicts in two medical malpractice cases in October

Partners Kevin Crews and Ashley Withers and associate Lindsey Grossman of Wicker Smith's Naples office, obtained a defense verdict in a medical malpractice case in Collier County, Florida. This case arose from an alleged missed diagnosis of an epidural abscess, leading to initial paralysis and then long-term upper and lower extremity deficits. Wicker Smith represented the hospital, the hospitalist who ordered the imaging, the infectious disease physician and a physician's assistant, but not the radiologist who misread the initial study and who was not involved in the case. Defense of the case centered around the argument that the hospitalist ordered the appropriate study to evaluate for an epidural abscess, but that the fault in this case lay with the misreading of the imaging, not in the care provided by the firm's clients. Plaintiff's counsel asked the jury for $12.5 million in closing arguments. After five hours of deliberation, the jury found no negligence on the part of the firm's clients and returned a complete defense verdict.

In a separate matter in Wicker Smith's Sarasota office, partner Doug Lumpkin and associate Andi Easterling obtained a defense verdict in a medical malpractice case in Manatee County, Florida. This case arose from the alleged misplacement of an L5 pedicle screw into the spinal canal by the firm's client neurosurgeon. Plaintiff further alleged a failure to timely diagnose and repair the misplacement, resulting in permanent neurologic deficits to the lower extremities. Efforts to settle this case prior to trial failed. At closing, Plaintiff's counsel asked the jury for $3.9 million. After a five-day trial, the jury found no causation and returned a complete defense verdict. Due to the rejection of a Proposal for Settlement, Wicker Smith's client will be entitled to seek fees and costs accrued since July 2022.

TRANSACTIONS

Hanson Bridgett (San Francisco, CA)

Hanson Bridgett represents cybersecurity company, solar industry tech in separate transactions

A deal team from Hanson Bridgett recently represented client LOCH Technologies, a cybersecurity company and global leader of next-generation wireless threat monitoring, in its acquisition of Avirtek, Inc. Founded by Professor Salim Hariri, Ph.D. in 2006, Avirtek is an Arizona-based firm that offers professional services and product development – including predictive AI/ML Data Detection and Response (DDR) capabilities. The integration between Avirtek's technology and LOCH's platform represents a significant advancement in the field of cybersecurity. The Hanson Bridgett team was led by partner Natalie Wilson and senior counsel Walt Binswanger.

Hanson Bridgett LLP also represented client OnSight Technology, a leading robotics and computer vision company for the photovoltaics (PV) solar industry, in its Series Seed Financing. Early-stage venture capital firm Moneta Ventures led the round, with Stäubli, the global market leader in solar connections, robotics and industrial automation, joining as a strategic investor and board member. Previous investor Sacramento-based Growth Factory also participated in the round. The Hanson Bridgett team included associate Charles "Chip" Becker and partner Natalie Wilson.

Hinckley Allen (Hartford, CT)

Hinckley Allen represents Onesource Water, LLC, in multi-state transactions

Hinckley Allen recently represented Onesource Water, LLC, in its acquisition of Pure Water Tech in Texas, Gray & Creech in North Carolina and West Coast Pure Water in Nevada. Terms of these transactions were not disclosed.

Onesource Water offers a cost-effective, greener alternative to traditional bottled water and uses the most advanced water purification technology available. Founded in 2005, Onesource Water is now the third largest bottle less water cooler service provider in the nation. With a commitment to excellent customer service and sustainable growth, Onesource Water was recently awarded the Corporate Value Award by the Association for Corporate Growth. With locations in 20 markets, the company is headquartered in Indianapolis, Indiana, and Farmington, Connecticut.

Rivkin Radler LLP (Uniondale, NY)

Kornblum and Ehrlich acquire $40 million for purchaser

Yaron Kornblum and Daniel Ehrlich represented a purchaser in the acquisition of a mixed-used building with approximately 60 units located in Midtown Manhattan for the purchase price of $40 million. The acquisition included construction, project, and acquisition financing; rent control and rent stabilization issues; employee union matters; and negotiating various amendments and other agreements on behalf of the purchaser.

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DIVERSITY, EQUITY AND INCLUSION

Several **2023 USLAW NETWORK Law School Diversity Scholarship Program recipients** with members of the USLAW NETWORK Diversity Council Leadership

AMUNDSEN DAVIS

In honor of National Hispanic Heritage Month, all Amundsen Davis offices had Hispanic-themed lunches catered-in, so that everyone could watch a special presentation by Justice Jesse Reyes (Illinois Appellate Court – 1st Judicial District) on the importance of diversity on the bench. This program was co-sponsored by Amundsen Davis and the Hispanic Lawyers Association of Illinois (HLAI). The presentation was given in Amundsen Davis's Chicago office and broadcasted to all Amundsen Davis offices via Zoom. In addition to inviting all Amundsen Davis personnel and HLAI members to attend in person or via Zoom, Hispanic Law Student Association (HLSA) and Latinx Law Students Association (LLSA) students from all law schools in northern Illinois were also invited to attend.

HansonBridgett

Hanson Bridgett achieves 2023 Mansfield Certification Plus for commitment to diversity and inclusion

Hanson Bridgett LLP in San Francisco achieved Diversity Lab's Mansfield Certification Plus for the third consecutive year. The firm achieved the certification based on its continued focus on increasing inclusivity and diversity in leadership.

"Hanson Bridgett is a long-time industry leader in the DEI space, and we have helped pave the way and raise awareness of the importance of fostering an inclusive environment for well over a decade," said Chief Diversity, Equity, and Inclusion Officer Jennifer Martinez. "We are honored to receive the latest iteration of the Mansfield Certification and will continue to bridge the gap by ensuring opportunities are available at Hanson Bridgett for women lawyers, lawyers of color, LGBTQ+ lawyers, and those with disabilities. Given the current national landscape, this work is more important than ever, and we intend to stand firm in our commitment to Mansfield principles."

The Mansfield methodology – which evolves and broadens each year – is a science-backed and data-driven solution aimed at shifting workplace cultures, increasing transparency, communicating career development and advancement opportunities, and sharing knowledge to work and succeed together. The latest 6.0 certification tracks and measures whether firms are expanding their pool of talent to include historically underrepresented groups. Hanson Bridgett achieved the "Certification Plus" status – a special categorization that includes metrics to ensure long-term successful outcomes.

Hanson Bridgett ranks 11th in Law360's 2023 Social Impact Leaders Ranking

Hanson Bridgett LLP in San Francisco is ranked #11 in Law360's national 2023 Social Impact Leaders Ranking for all law firms and #2 in the 101-250 lawyer category. According to Law360, the ranking "seeks to identify the 100 firms that are taking the greatest strides on social responsibility," and the ranking relies on five key indicators of socially responsible business practices: racial and ethnic diversity, gender equality, employee engagement, pro bono service and responsible business.

"It's very rewarding to be recognized for what is so fundamental here at Hanson Bridgett," said Samir Abdelnour, Hanson Bridgett's director of pro bono and social impact. "We work very hard to ensure that diversity, equity, and inclusion are front and center and that we actively give back to our communities. We are also constantly looking for ways to improve in each of the five indicators measured in these rankings. While we are proud of the progress we have made, we know there is still more work to do in these areas for us and for the entire legal industry."

Rivkin Radler sponsors Hudson Valley Hispanic Bar Association Hispanic Heritage Month Celebration

In October, Rivkin Radler served as a sponsor of the Hudson Valley Hispanic Bar Association 9th Judicial District's Hispanic Heritage Month Celebration. The program featured an extensive list of notable speakers and a cultural performance by Opera Hispánica.

Kang Meets with Mayor Oh Se-Hoon from Seoul

Gene Kang of Rivkin Radler LLP attended a meeting with Oh Se-Hoon, the mayor of Seoul, South Korea, during the mayor's visit to New York City, which was organized by New York City Small Business Administration Commissioner Kevin Kim. Among the topics discussed were ways to foster cultural visibility and business relationships across cities. Mayor Oh visited New York with a delegation from South Korea to meet with New York City Mayor Eric Adams and others during the United Nations General Assembly.

USLAW NETWORK announces 2024 Virtual Job Fair Date

pro bono SPOTLIGHT

Hanson Bridgett's pro bono work supports a trio of recent immigration cases

This year, a team of Hanson Bridgett attorneys and administrative professionals obtained a 9th Circuit order of remand to the Board of Immigration Appeals (BIA) to reconsider Hanson Bridgett's clients' asylum case. The clients were facing deportation to El Salvador after 9 years in the United States, where they fled to escape gang violence. The 9th Circuit was the clients' last chance to avoid deportation after the Immigration Court had ordered their removal, and the BIA affirmed, despite a 600+ page record supporting their asylum claims. After Hanson Bridgett filed its clients' opening brief with the 9th Circuit, and before the Government's response brief was due, the Government's attorney requested a stipulation to remand the case rather than continue the 9th Circuit proceeding. The motion to remand tracked Hanson Bridgett's arguments in its opening brief for why the Immigration Courts' decisions should be reversed. The case now goes back to the Board of Immigration Appeals for a new briefing schedule, which could take years to set and resolve. The clients are protected from removal while the case is pending and are currently living happily in California.

Another team of Hanson Bridgett attorneys obtained a favorable bond order for its client who had been held in Immigration and Customs Enforcement (ICE) detention for nearly two years without a bond hearing. The client is a legal permanent resident who immigrated when he was 6 months old. Two years ago, a few days before he was about to complete a jail sentence on an old charge that he voluntarily turned himself in for, the client was taken into custody by ICE and transferred to the ICE Mesa Verde detention facility, where he had been held without a bond hearing since. Hanson Bridgett took on Oscar's case to challenge his ongoing detention through a petition for writ of habeas corpus on his behalf in the Northern District of California. After hearing arguments from the Hanson Bridgett attorney and the Government's attorney, as well as direct testimony from the client himself, the Immigration Court granted the firm's client release on the minimum allowable bond, allowing him to return home to his family while he awaits the outcome of his immigration case.

Twelve Hanson Bridgett attorneys and one law clerk have participated in three clinics this year with a Sacramento-based non-profit organization to help Afghan refugees apply to the United States Citizenship and Immigration Services (USCIS) for different forms of immigration relief, including temporary protective status, asylum, and legal permanent resident status. In all, Hanson Bridgett's attorneys helped 12 Afghan refugee families and submitted a total of 34 applications to USCIS. These clinics were set up in response to the 2021 Taliban takeover of Afghanistan, which led many refugees to flee Afghanistan to nearby countries, ultimately making their way to the United States as refugees. Sacramento has one of the highest populations of Afghan refugees in the entire country. Many of these families do not speak fluent English, so the firm's ability to help complete forms is essential to securing lawful immigration status to avoid deportation. With Hanson Bridgett's assistance, these families will hopefully be spared from returning to Afghanistan, where they would be persecuted based on political opinion, nationality, ethnic or social group.

Hinckley Allen: A win for those in need

Timothy S. Hollister of Hinckley Allen represented Rainbow Housing Corporation and its affiliate Gilead Community Services, subsidiaries of mental health services providers Connecticut Institute for the Blind and Oak Hill, in a tax exemption case in the Connecticut Superior Court, and then as co-counsel with Attorney Pat Naples of Shipman & Goodwin, in the Supreme Court.

In Rainbow Housing Corp. v Town of Cromwell, the Town claimed that the Rainbow/Gilead mental health facility did not qualify as tax-exempt "temporary housing" because the facility did not have a defined maximum length of stay for individuals receiving mental health services. The Supreme Court ruled in favor of Rainbow, stating that as long as the housing is part of a mental health treatment program, and the housing is not permanent in the sense of being a person's "domicile", and the length of stay is based on the treatment program, then the property and the facility are tax exempt.

This was a significant multi-disciplinary win, as this case has a history dating back to 2015. At that time, Gilead tried to establish, in a residential neighborhood, a group home for men recovering from drug and alcohol addiction. In the aftermath of Gilead's abandonment of that facility, the town revoked the previously recognized tax exemption of another group home owned by Rainbow and operated by Gilead, which had been in existence for more than a decade. The revocation resulted in the tax exemption case. Whether the revocation was part of retribution against Gilead is part of a federal civil rights case going to trial in federal District Court in October 2021.

Hinckley Allen works hard to support its nonprofit clients to ensure they can continue providing their important services to our communities.

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about USLAW NETWORK

2001. The Start of Something Better.

Mega-firms...big, impersonal bastions of legal tradition, encumbered by bureaucracy and often slow to react. The need for an alternative was obvious. A vision of a network of smaller, regionally based, independent firms with the capability to respond quickly, efficiently and economically to client needs from Atlantic City to Pacific Grove was born. In its infancy, it was little more than a possibility, discussed around a small table and dreamed about by a handful of visionaries. But the idea proved too good to leave on the drawing board. Instead, with the support of some of the country's brightest legal minds, USLAW NETWORK became a reality.

Fast forward to today.

The commitment remains the same as originally envisioned. To provide the highest quality legal representation and seamless cross-jurisdictional service to major corporations, insurance carriers, and to both large and small businesses alike, through a network of professional, innovative law firms dedicated to their client's legal success. Now as a diverse network with more than 6,000 attorneys from nearly 100 independent, full practice firms across the U.S., Canada, Latin America and Asia, and with affiliations with TELFA in Europe, USLAW NETWORK remains a responsive, agile legal alternative to the mega-firms.

Home Field Advantage.

USLAW NETWORK offers what it calls The Home Field Advantage which comes from knowing and understanding the venue in a way that allows a competitive advantage – a truism in both sports and business. Jurisdictional awareness is a key ingredient to successfully operating throughout the United States and abroad. Knowing the local rules, the judge, and the local business and legal environment provides our firms' clients this advantage. The strength and power of an international presence combined with the understanding of a respected local firm makes for a winning line-up.

A Legal Network for Purchasers of Legal Services.

USLAW NETWORK firms go way beyond providing quality legal services to their clients. Unlike other legal networks, USLAW is organized around client expectations, not around the member law firms. Clients receive ongoing educational opportunities, online resources, including webinars, jurisdictional updates, and resource libraries. We also provide *USLAW Magazine*, compendia of law, as well as an annual membership directory. To ensure our goals are the same as the clients our member firms serve, our Client Leadership Council and Practice Group Client Advisors are directly involved in the development of our programs and services. This communication pipeline is vital to our success and allows us to better monitor and meet client needs and expectations.

USLAW IN EUROPE.

Just as legal issues seldom follow state borders, they often extend beyond U.S. boundaries as well. In 2007, USLAW established a relationship with the Trans-European Law Firms Alliance (TELFA), a network of more than 20 independent law firms representing more than 1,000 lawyers through Europe to further our service and reach.

How USLAW NETWORK Membership is Determined.

Firms are admitted to the NETWORK by invitation only and only after they are fully vetted through a rigorous review process. Many firms have been reviewed over the years, but only a small percentage were eventually invited to join. The search for quality member firms is a continuous and ongoing effort. Firms admitted must possess broad commercial legal capabilities and have substantial litigation and trial experience. In addition, USLAW NETWORK members must subscribe to a high level of service standards and are continuously evaluated to ensure these standards of quality and expertise are met.

USLAW in Review.

- All vetted firms with demonstrated, robust practices and specialties
- Organized around client expectations
- Efficient use of legal budgets, providing maximum return on legal services investments
- Seamless, cross-jurisdictional service
- Responsive and flexible
- Multitude of educational opportunities and online resources
- Team approach to legal services

The USLAW Success Story.

The reality of our success is simple: we succeed because our member firms' clients succeed. Our member firms provide high-quality legal results through the efficient use of legal budgets. We provide cross-jurisdictional services eliminating the time and expense of securing adequate representation in different regions. We provide trusted and experienced specialists quickly.

When a difficult legal matter emerges – whether it's in a single jurisdiction, nationwide or internationally – USLAW is there.

For more information, please contact Roger M. Yaffe, USLAW CEO, at (800) 231-9110 or roger@uslaw.org

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the complete USLAW SOURCEBOOK

USLAW NETWORK offers legal decision makers a variety of complimentary products and services to assist them with their day-to-day operation and management of legal issues. USLAW Client Resources provide information regarding each resource that is available. We encourage you to review these and take advantage of those that could benefit you and your company. For additional information, contact Roger M. Yaffe, USLAW CEO, at roger@uslaw.org or (800) 231-9110, ext. 1.

USLAW is continually seeking to ensure that your legal outcomes are successful and seamless. We hope that these resources can assist you. Please don't hesitate to send us input on your experience with any of the USLAW client resources products or services listed as well as ideas for the future that would benefit you and your colleagues.

VIRTUAL OFFERINGS

USLAW has many ways to help members virtually connect with their clients. From USLAW Panel Counsel Virtual Meetings to exclusive social and networking opportunities to small virtual roundtable events, industry leaders and legal decision-makers have direct access to attorneys across the NETWORK to support their various legal needs.

EDUCATION

It's no secret – USLAW can host a great event. We are very proud of the timely industry-leading interactive roundtable discussions at our semi-annual client conferences, forums and client exchanges. Reaching from national to more localized offerings, USLAW member attorneys and the clients they serve meet throughout the year at USLAW-hosted events and at many legal industry conferences. USLAW also offers industry and practice group-focused virtual programming. CLE accreditation is provided for most USLAW educational offerings.

A TEAM OF EXPERTS

USLAW NETWORK undoubtedly has some of the most knowledgeable attorneys in the world, but did you know that we also have the most valuable corporate partners in the legal profession? Don't miss out on an opportunity to better your legal game plan by taking advantage of our corporate partners' expertise. Areas of expertise include forensic engineering, legal visualization services, jury consultation, courtroom technology, forensic accounting, record retrieval, structured settlements, future medical fund management, and investigation.

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LAWMOBILE

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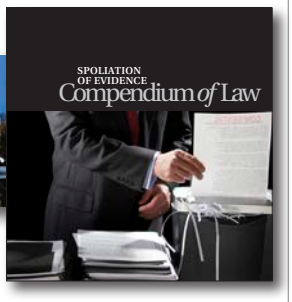
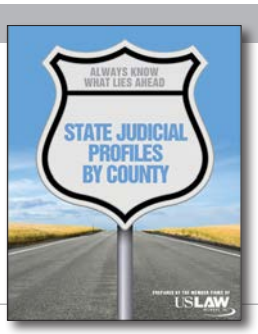
COMPENDIA OF LAW

USLAW regularly produces new and updates existing Compendia providing multi-state resources that permit users to easily access state common and statutory law. Compendia are easily sourced on a state-by-state basis and are developed by the member firms of USLAW. Some of the current compendia include: Retail, Spoliation of Evidence, Transportation, Construction Law, Workers' Compensation, Surveillance, Offer of Judgment, Employee Rights on Initial Medical Treatment, and a National Compendium addressing issues that arise prior to the commencement of litigation through trial and on to appeal. Visit the Client Toolkit section of uslaw.org for the complete USLAW compendium library.





STATE JUDICIAL PROFILES BY COUNTY

Jurisdictional awareness of the court and juries on a county-by-county basis is a key ingredient to successfully navigating legal challenges throughout the United States. Knowing the local rules, the judge, and the local business and legal environment provides a unique competitive advantage. In order to best serve clients, USLAW NETWORK offers a judicial profile that identifies counties as Conservative, Moderate or Liberal and thus provides you an important Home Field Advantage.

USLAW MAGAZINE

USLAW Magazine is an in-depth publication produced and designed to address legal and business issues facing today's corporate leaders and legal decision-makers. Recent topics have covered cyber-security & data privacy, artificial intelligence, medical marijuana & employer drug policies, management liability issues in the face of a cyberattack, defending motor carriers performing oversized load & heavy haul operations, nuclear verdicts, employee wellness programs, social media & the law, effects of electronic healthcare records, allocating risk by contract and much more.

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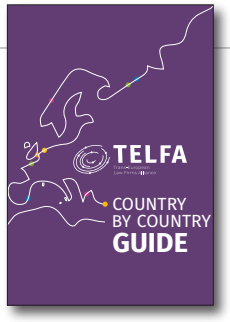
In today's digital world there are many ways to connect, share, communicate, engage, interact and collaborate. Through any one of our various communication channels, sign on, ask a question, offer insight, share comments, and collaborate with others connected to USLAW. Please connect with us via LinkedIn, Instagram, Facebook and X, formerly known as Twitter.

TELFA CORPORATE PRACTICE GROUP COUNTRY-BY-COUNTRY GUIDE

The Trans European Law Firms Alliance (TELFA) Corporate Practice Group Country-by-Country Guide provides legal decision-makers with relevant info for creating corporate structures in jurisdictions across Europe. The corporate structure guide is intended to:

- Provide an overview of the different corporate structures and requirements in the EU.
- Inform about directors' liabilities.
- Supplement company law aspects by always considering issues of tax.

To view and download the TELFA Country-by-Country Guide, visit the Client Toolkit section of uslaw.org.



PRACTICE GROUPS

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Coleman Chavez & Associates represents a variety of clients, including employers, insurance carriers and third-party administrators. We take pride in the quality of our work, and we are committed to providing thorough and effective representation to our clients. We believe that we can achieve the best results by staying well informed on the law, being thoroughly prepared, negotiating assertively and effectively, and keeping an open line of communication with our clients.

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MEMBER SINCE 2020 Founded over a century ago, Rubin and Rudman LLP is a full-service law firm with more than 75 lawyers in Boston, Massachusetts. With a diverse mix of practices, Rubin and Rudman serves national and international companies, including large public companies and closely held businesses; real estate developers; biotechnology, pharmaceutical and medical device makers; regulated industries, public entities and municipalities; insurance companies and their insureds; educational and other institutions; non-profit organizations; families and high net worth individuals. Rubin and Rudman also has a suburban office in Woburn, Massachusetts. Web: www.rubinrudman.com.

Our years of experience and continuing dedication to providing high quality legal advice has earned us client loyalty and respect amongst our peers. Our attorneys thrive on challenging assignments across diverse areas of the law. We offer innovation and responsiveness, with a collaborative team approach to solving problems that get results.

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CCTB has built a reputation for strong client relationships as a result of its lawyers' skills in communication and counseling. If litigation cannot be avoided, our seasoned litigation group is prepared to aggressively defend the interests of our clients in state and federal courts. While Mississippi can be a challenging jurisdiction, the record of CCTB clients speaks well for the quality of our representation.

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Since 1912 our simple philosophy has never changed: at the core of every case is the client. The client's goals become our goals, and our firm works tirelessly to find the most efficient and cost-effective solution to each legal issue.

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With a strong emphasis in civil defense litigation for insureds and self-insureds, including expertise in complex litigation, general business, commercial law, and industrial insurance defense, Thorndal, Armstrong, Delk, Balkenbush & Eisinger is committed to providing thorough, efficient and effective legal services to its clients. Its experienced attorneys, combined with a highly capable professional support staff, allow the firm to represent clients on a competitive, cost-efficient basis.

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Our focus is on innovative solutions to serve the needs of clients with sophisticated legal representation. We represent corporate clients in commercial disputes, and professionals in lawsuits alleging breach of contract and professional negligence, including employment practices, defense of lawyers, accountants, financial advisors, agents, brokers, corporate directors and officers. Our practice groups include defense of general and municipal liability, products liability, and complex toxic tort lawsuits.

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We provide strong representation and build even stronger client relationships. Many clients have been placing their trust in us for more than 30 years. Our unwavering commitment to total client satisfaction is the driving force behind our firm. We are the advisor-of-choice to successful individuals, middle-market companies and large corporations.

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Our practice areas include transportation, railroad, asbestos, premises liability, products liability, family law, estate, Medicare Set-Aside, workers' compensation, and general liability. In addition to trial representation, catastrophic response and business consulting, the firm has an appellate and complex research group. The Partners of the firm have more than 150 years of collective experience.

Most of our lawyers and staff were born and raised in Pennsylvania and we are proud to be part of the distinguished Pittsburgh and Harrisburg legal communities. The emergency response telephone number (412-600-0217) is answered by a lawyer 24/7 and allows us to provide high quality service to our clients. We urge our clients to utilize this number should the need arise.

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Among the firm's more than 60 attorneys are several former leaders of the Rhode Island legislature as well as former senior members of state administrations who are able to provide a unique understanding of governmental processes for clients. The firm's client base includes Fortune 500 and 100 companies, small and medium-sized businesses, individuals, public and quasi-public agencies, and private not for- profit organizations.

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Cooperation, selflessness, and diligence are essential to providing high-quality service to every client. At Sweeny, Wingate and Barrow, we are committed to providing excellent representation to our clients in helping achieve their legal goals. Our relationships with our clients are honest, open, and fair.

Our practice covers many legal issues in two distinct areas. As a business and tort litigation defense firm, we provide defense representation to corporations and individuals in trucking litigation, construction defect litigation, product liability cases, medical malpractice cases, and insurance coverage matters, including opinion letters and defense of accident claims, professional liability, construction defect, and product liability defense.

The other section of our practice includes the transactions and litigation situations that arise in connection with business planning, estate planning, probate administration, and probate litigation. We handle contract drafting, incorporations, startups, wills, trusts, probate matters, and countless other business needs for our clients.

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The firm has a wide and varied practice, particularly in central South Dakota, but also maintains a statewide litigation practice, regularly appears before State boards and commissions, and serves as legislative counsel for numerous associations and cooperatives.

Firm members have spent considerable time representing insurance companies in defense of casualty suits, products liability claims and similar matters.

The firm handles substantial regulatory law matters, and also does much work relating to banking, contracts, real estate, title work and probate and estate planning.

All members of the firm are active in professional activities and civic and fraternal organizations.

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The firm's litigation team handles product liability defense, toxic torts and environmental litigation, construction litigation, premises liability, commercial litigation, and general liability defense. Its award-winning healthcare team works on matters involving medical professional liability, healthcare litigation, and employment disputes. Known as experienced trial attorneys, MRC lawyers also pursue alternative means of dispute resolution when appropriate, including arbitration and mediation.

The firm's robust business transactional practice includes representation of corporate clients and developers in large-scale financing and commercial real estate deals. Team attorneys are experienced in entity formation, creditors' rights, securities offerings, tax-advantaged arrangements such as 1031 exchanges, and other complex transactions.

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At Flaherty, we are deeply committed to partnering with our clients to obtain optimum results. Throughout our history, our prime consideration has been our client's interests, with a key consideration of the costs associated with litigation.

While avoiding litigation may be desired, when necessary, our attorneys stand prepared to bring their considerable experience to the courtroom. We are experienced in trying matters ranging from simple negligence to complex, multi-party matters involving catastrophic damages.

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MEMBER SINCE 2019 Relentless. Inspired. Committed. Authentic. Our team of professionals share an almost fanatical commitment to practicing Law as a means of balancing the unbalanced, leveling the unleveled, and bringing big-time results to you, our client.

We want the hardest problems you can throw at us. There is nothing we love more than diving deep into complex litigation and disputes. We will solve your problems, no matter how large or how small. This team thrives under pressure, so pile it on. Our team of battle-tested attorneys brings an unmatched drive and determination to every client. We don't rest on our laurels. We innovate and create new solutions to produce winning results. We bring order and symmetry to chaos and complexity. We love what we do.

Lots of firms talk about being responsive; we live it. Our commitment to serving our clients fundamentally shapes how we view and practice law.

We are human beings. While we thrive under incredible challenges and difficult circumstances, we also care deeply about the people we work with and represent. Being authentic also means that we recognize our clients are people too. We understand them, and we know them.

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Clients of the firm benefit from its knowledge and experience in all areas of corporate life and our commitment to excellence. The firm`s work philosophy, combined with the integration among its offices, practice groups and lawyers, put the firm in a privileged position to assist its clients with the highest quality in legal services.

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Our insurance defence team is amongst the largest in the region and is recognized in the Lexpert Legal Directory for Canada as a 'leading litigation firm in eastern Ontario' in the area of commercial insurance. The group regularly acts for leading insurers on insurance defence and subrogation.

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From our original focus on agri-business, the firm has grown and branched out both in terms of its size and expertise. While we have maintained our industry leadership with respect to our historical roots, we handle a wide range of matters for our clients. Our most significant ingredient for success however continues to be the professionals of our firm who commit themselves every day to serving our clients.

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MEMBER SINCE 2012 In 1992, Duan&Duan Law Firm was one of the first firm to open its doors in Shanghai and in China. From its beginning, Duan&Duan Law Firm has always offered, to selected PRC Lawyers, a unique opportunity to leave their mark on the legal community and to contribute to China's flourishing economy and developing legal environment. Due to its long history, Duan&Duan can be seen as a window reflecting the multiple changes and the rapid evolution of the legal industry in the PRC during China's reform and opening-up. Duan&Duan's success can be understood by examining closely its unique business model: • It is the first private partnership that has been established in the PRC by Chinese nationals returning to China after completing overseas studies and after gaining working experience abroad; and • It is also a small, but a representative example, of the many successful businesses that saw the need for services focusing on PRC related to foreign businesses and transactions. Duan&Duan Law Firm has grown to become a prestigious medium size PRC law firm, with an international profile and practicing law in accordance with international standards, focusing on legal issues involving foreign businesses and PRC laws and regulations.

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